SUPREME COURT, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 264

REGINALD LEE FRAZIER, Attorney at Law,
New Bern, Craven County, North Carolina,

Petitioner,

—versus—

THE NORTH CAROLINA STATE BAR,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

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INDEX

	PAGE
Opinion Below	2
Jurisdiction	2
Questions Presented	2
Constitutional and Statutory Provisions Involved	5
Statement of Case	7
How the Federal Questions Were Raised and Decided Below	15
Reasons for Granting the Writ	17
Conclusion	25

Appendices

Appendix "A"—Opinion of the Supreme Court of North Carolina	27
Appendix "B"—Judgment of the Superior Court of Craven County	44
Appendix "C"—Judgment of the Full Council of the North Carolina State Bar	52
Appendix "D"—Report of the Trial Committee	62
Appendix "E"—North Carolina General Statutes 84-28	73
Appendix "F"—Rules of the North Carolina State Bar, Article VI	78
Appendix "G"—Assignments of Errors	82

Table of Authorities

PAGE

Anderson v. McRae, 211 N. C. 197, 189 S. E. 639 16
Arizona Eastern R. Co. v. Head, 224 P. 1057, 26 Ariz. 259 20

Chambers v. Baltimore, etc., R. Co., 207 U. S. 142, 28 S. Ct. 34, 52 L. Ed. 143 24
Chicago, etc. R. Co. v. Nye Schneider Fowler Co., 260 U. S. 35, 43 S. Ct. 55, 67 L. Ed. 115 20
Clark Equipment Co. v. Johnson, 261 N. C. 269, 134 S. E. 2d 327 21
Cole v. Arkansas, 333 U. S. 196, 68 S. Ct. 514, 92 L. Ed. 644 ..... 18, 19

DeMond v. Liquor Control Commission, 129 Conn. 642, 30 A. 2d 547 20
Douglas v. Alabama, 380 U. S. 415, 85 S. Ct. 1074, 13 L. Ed. 2d 934 23

First Unitarian Church of Los Angeles v. Los Angeles County, 357 U. S. 513, 78 S. Ct. 1350, 2 L. Ed. 2d 1460 23

Garrity v. State of New Jersey, —— U. S. ——, 87 S. Ct. ——, 17 L. Ed. 2d 562 24
Gonzales v. United States, 348 U. S. 407, 75 S. Ct. 409, 99 L. Ed 497 20
Greene v. McElroy, 360 U. S. 474, 79 S. Ct. 1400, 3 L. Ed. 2d 1377 23

Holt v. Virginia, 381 U. S. 131, 85 S. Ct. 1375, 14 L. Ed. 2d 290 21
Hornsby v. Allen, 326 F. 2d 605 (5th Cir. 1964) 23

PAGE

In Re Burton, 257 N. C. 534, 126 S. E. 2d 581 .....17, 18-19

Jaffe v. State Department of Health, 135 Conn. 339, 64 A. 2d 330, 6 A. L. R. 2d 664 20

James Henry White et ux v. Hattie McCarter, et al., 261 N. C. 362, 134 S. E. 2d 612 .....23, 24

Louisville etc. R. Co. v. Garrett, 231 U. S. 208, 34 S. Ct. 48, 58 L. Ed. 229 20

Missouri P. R. Co. v. Tucker, 230 U. S. 340, 33 S. Ct. 961, 57 L. Ed. 1507 20

Mooney v. Holohan, 294 U. S. 103, 55 S. Ct. 340, 79 L. Ed. 741 21

Pointer v. Texas, 380 U. S. 40, 85 S. Ct. 1065, 13 L. Ed. 2d 923 23

Pyle v. Kansas, 317 U. S. 213, 63 S. Ct. 177, 87 L. Ed. 214 21

Spevak v. Kleen, —— U. S. ——, 87 S. Ct. ——, 17 L. Ed. 2d 574 24

State Bar v. Frazier, 269 N. C. 625, —— S. E. 2d —— 2, 3, 14

United States v. Rutkin, 212 F. 2d 641 (3rd Cir. 1954) 21

Willner v. Committee on Character Fitness, 373 U. S. 96, 83 S. Ct. 1175, 10 L. Ed. 2d 224 .....19, 23

Constitutional Provisions

PAGE

Article 6, Clause 2, Federal Constitution 24

Privileges or Immunities, Due Process and Equal Protection Clauses, Fourteenth Amendment, Federal Constitution 5, 23

State Statutes

North Carolina General Statutes

1-194 ..... 5, 18, 20

84-28(3)(f) 6, 9, 17, 18, 19, 20

143-315 21

United States Code

28 U. S. C. 1257(3) 2

IN THE

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OCTOBER TERM, 1967

Number .....

REGINALD LEE FRAZIER, Attorney at Law,
New Bern, Craven County, North Carolina,

Petitioner,

—versus—

THE NORTH CAROLINA STATE BAR,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

To the Justices of the Supreme Court of the United States:

The petitioner herein prays that a writ of certiorari issue to review the final Judgment of the Supreme Court of North Carolina which was entered on the 22nd day of March, 1967, and which affirmed the Judgment of the Superior Court of Craven County. The Judgment of the Superior Court of Craven County is dated October 7, 1966, and was signed by Honorable Rudolph I. Mintz, Superior Court Judge. The Judgment affirmed by the Supreme Court of North Carolina ordered a twelve month suspension from law practice against petitioner for alleged corrupt and unprofessional conduct in the course of law practice.

Opinion Below

The Opinion of the Supreme Court of North Carolina is reported as follows: Volume 269, North Carolina Reports, Page 625 (269 N. C. 625); Volume ....., Southeastern Reports, Second Series, Page ..... (..... S. E. 2d .....). The Opinion is set forth in Appendix "A", *infra*.

Jurisdiction

The Judgment of the Supreme Court of North Carolina was entered on March 22, 1967, and is set forth in the Record before this Court. The Opinion of the Supreme Court of North Carolina affirmed the Judgment of the Superior Court of Craven County and was entered on the 22nd day of March, 1967.

Jurisdiction of this Court is invoked pursuant to 28 U. S. C., Section 1257(3), petitioner having asserted below and asserting here deprivation of rights secured by the Constitution of the United States.

Questions Presented

A Judgment was entered in the Superior Court of Craven County, North Carolina, at New Bern, North Carolina, in a disbarment proceeding wherein petitioner was suspended from the practice of law for a twelve month period and a six month period, running concurrently with the twelve month suspension of time. The Supreme Court of North Carolina affirmed the Judgment of the Superior Court of Craven County in an Opinion which was filed March 22,

1967. See *State Bar* v. *Frazier*, 269 N. C. 625, —— S. E. 2d ——. In the Superior Court of Craven County, as in all prior administrative hearings prior to the hearings in the North Carolina Courts and in the Supreme Court of North Carolina, petitioner raised and pressed the following issues:

1. Did the Superior Court of Craven County err by failing to dismiss the proceeding against petitioner as being beyond respondent's power in regard to disbarment or disciplinary proceedings?

2. Did the Superior Court of Craven County err by failing to dismiss the proceeding against petitioner in view of the denial to petitioner of opportunity to examine members of the Grievance Committee and in view of the limited view which petitioner was permitted to have of minutes of the Grievance Committee?

3. Did the Superior Court of Craven County err by failing to grant petitioner's Motion to Strike portions of respondent's Complaint?

4. Did the Superior Court of Craven County err in its ruling in regard to the admission of evidence?

5. Did the Superior Court of Craven County err in the making of Findings of Fact and Conclusions of Law at variance with those of the North Carolina State Bar?

6. Did the Superior Court of Craven County err by entry of a more severe Judgment upon petitioner's appeal than the Judgment of the Council from whence petitioner had appealed?

The Opinion of the Supreme Court, *ad seriatim*, passed upon each of petitioner's contentions.

Petitioner, throughout the disbarment proceeding against him, consistently maintained, in effect, that (1) the disbarment proceeding against him was grossly unfair, in that, two dissimilar proceedings were fused in such fashion as to render petitioner without real opportunity to make defense; (2) he was denied access to requested information which was necessary for his defense; (3) he was denied the right to confront accusers, and facts were found against him and confirmed upon "raw" hearsay and reports; (4) the proceeding against him involved the unfair requirement that petitioner carry the burden of respondent's case; (5) petitioner was penalized for contesting a civil action against him and brought to disbarment proceedings solely because the jury verdict and judgment in the civil action were against him—all without a finding in said civil action of the facts assumed in respondent's disbarment action. Petitioner painstakingly invoked federal constitutional protection at each appropriate stage of the proceeding and for each of the deprivations described above.[1]

In view of the matter above referred to, the questions presented are as follows:

1. Was there such a fusion of separate and dissimilar disbarment proceedings in the instant case, to wit, a fusion of statutory and judicial proceedings, as to render petitioner without real opportunity to make a defense and as to render the proceeding against him void of procedural due process of law?

2. Was petitioner denied procedural due process by being denied access to information which he sea-

[1] See Assignments of Error before the State Supreme Court, Appendix "G", *infra*.

sonably requested for the purpose of preparing his defense?

3. Was petitioner denied the right to confront accusers and were facts found upon hearsay evidence in a manner contrary to due process of law?

4. Did the disbarment proceeding against petitioner involve the shifting of respondent's burden of proof to petitioner in such manner as to deny to petitioner the due process of law?

5. Was petitioner unconstitutionally penalized by being brought to disbarment proceedings because he had unsuccessfully defended a civil action against him, which involved an allegation of debt only?

Constitutional and Statutory Provisions Involved

This case involves the Due Process Privileges or Immunities, and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States. The case also involves the application of North Carolina General Statutes 1-194, which reads as follows:

> "The referee shall make and deliver a report within the time ordered by the Court, to the clerk of the court in which the action is pending. Either party, during the term or upon ten days' notice to the adverse party out of term, may move the judge to review the report, and set aside, modify or confirm it in whole or in part, and no judgment may be entered on any reference except by order of the Judge."

The above quoted statute is made applicable to this proceeding by North Carolina General Statutes 84-28(3)(f), which, in parts relative to this proceeding, reads as follows:

> "For the trial of the person charged before a committee (if trial by a jury is waived) selected in accordance with the foregoing provisions, which trial shall conform as nearly as practicable to the procedure provided by law before referees in references by consent with the right to appeal to the superior court by filing of exceptions with the council and from order or judgment of the council, the entire record shall be filed with the clerk of the superior court of the county in which the person charged resides if he resides within the State, or in Wake County if the person charged does not reside within the State, and thereafter all proceedings in connection with the charge shall be conducted in the superior court in term in accordance with the laws and rules relating to civil actions in which there has been a reference by consent, but neither party shall be entitled to a trial by jury. Both parties shall have the right to appeal to the Supreme Court in accordance with the procedure permitting appeals in civil actions."

All of North Carolina General Statute 84-28(3)(f) is reproduced in the Appendices to the Petition.[2] Applicable Rules of Respondent State Bar are reproduced herein as Appendix "F" of this Petition.

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[2] See Appendix "E".

Statement of Case

Petitioner in this Court was the "appellant" in the Supreme Court of North Carolina, and "respondent" in all tribunals below the State Supreme Court. Respondent herein, the North Carolina State Bar, was "appellee" in the Supreme Court of North Carolina, and "complainant" in all tribunals below the State Supreme Court. Petitioner Reginald Lee Frazier is referred to in this Petition as "petitioner", while the North Carolina State Bar is referred to as "respondent." The Record before the State Supreme Court is on file in this Court and references are made to it as follows: "(R. p. .....)." Exhibits which were before the State Supreme Court have also been filed in this Court and are referred to in the same manner as they were referred to in the Supreme Court of North Carolina.

The instant proceeding began with the service of petitioner with respondent's Complaint on the 17th day of December, 1964, by the Sheriff of Craven County. The Complaint was in thirty-six paragraphs, the last paragraph of which was as follows:

> "The conduct of the said Reginald L. Frazier hereinabove set forth involved willful deceit, fraud, and was otherwise unprofessional; and said conduct was in violation of the laws of the State of North Carolina, particularly G. S. 84-28, subsections (2)b, d, e, and f."

The Prayer, as appears in the Complaint, was as follows:

> "WHEREFORE, Complainant respectfully prays the disciplinary action be administered to Reginald L.

Frazier as the evidence on the hearing warrants; and that the respondent be taxed with all costs in connection with this proceeding; and for such other and further relief as to the Committee seems appropriate" (R. pp. 3 to 12).

Petitioner filed Answer to the Complaint on or about the 14th day of January, 1965, in which petitioner denied all of the material allegations of the Complaint (R. pp. 25 to 38). Petitioner also annexed to his answer six numbered Further Answers and Defenses in which he respectively (1) denied any fraudulent conduct as was alleged in respondent's Complaint, and set up matter in vindication of himself; (2) denied any unprofessional conduct or intentions in talking to Mrs. Hattie McCarter, now deceased, and in recording their conversation, and petitioner set up allegations in vindication of his conversation with Mrs. Hattie McCarter, now deceased, and in vindication of his recording of their conversation; (3) moved to strike matter which petitioner alleged to be evidential, frivolous, conclusions of law, incompetent, relative to inadmissible evidence and highly prejudicial; (4) alleged reasons for a pre-trial adverse examination of the Secretary of the Bar and moved for such examination; (5) moved for a severance of the two causes alleged in the Complaint against petitioner by reason of misjoinder of a cause of action for (a) an alleged fraudulent retention of a client's funds and (b) for a breach of professional ethics in conversing with another attorney's client and in tape recording the conversation for use against the party, and (6) moved for a trial committee to be appointed by the Su-

preme Court of North Carolina pursuant to North Carolina General Statutes 84-28(3) d2.

In response to request by Honorable E. L. Loftin, President of the North Carolina State Bar, the Supreme Court of North Carolina constituted petitioner's Trial Committee at a conference on the 29th day of January, 1965. A pretrial conference was scheduled and held in this cause in New Bern, North Carolina, on the 28th day of May, 1965, for the purpose of ruling upon preliminary motions raised by petitioner's Further Answers and Defenses and including respondent's Motion to Strike paragraph 2 of petitioner's Fourth Further Answer and Defense. After hearing counsel for both sides, the Trial Committee granted petitioner's Motion to Strike paragraphs 13 and 15 of respondent's Complaint and denied the Motion to Strike as to paragraphs 3, 14, 16, 17, 22, 23, 24, 28, 29, 30, 31, 32, 33, 34 and 36. Petitioner excepted to the denials of his Motion to Strike. (Exceptions Nos. 28, 13, 13A, 13B and 20, R. pp. 171, 131, 146.) The Trial Committee allowed respondent's Motion to Strike paragraph 2 of petitioner's Fourth Answer and Defense. The Trial Committee also entered an Order, upon motion of petitioner, to examine adversely the Secretary of the North Carolina State Bar, setting the adverse examination for June 10, 1965, in the City of Raleigh, North Carolina (R. p. 88). The Trial Committee also set the trial of the proceeding at 10:00 a. m. on June 28, 1965, in New Bern, North Carolina.

The adverse examination of the Honorable Secretary of the North Carolina State Bar was held in Raleigh, North Carolina, pursuant to the Order of the Trial Committee (R. p. 82). During this examination, the Honorable Secre-

tary testified that no written and sworn Complaint was ever received by the State Bar in regard to petitioner's conduct and that one, Hattie McCarter, now deceased, never filed a complaint or statement under oath with the State Bar in regard to petitioner (R. pp. 93 and 94); that he discussed the matter with several members of the Craven County Bar and several laymen (R. pp. 92 and 93) but received no sworn statements or complaints in regard to petitioner; that he received copies of Court papers, upon which this proceeding was based, from Bar Councilor Albion Dunn while that action was pending in the Superior Court of Craven County (R. pp. 91 to 94); that he, the Secretary of the North Carolina State Bar, respondent herein, delivered to the Grievance Committee, during its April 1964 meeting, Court papers in the civil action in which petitioner was a defendant after Opinion by the Supreme Court of North Carolina, along with the Opinion of said Court (R. pp. 91 to 104). The transcript of this adverse examination was made a part of the instant Record by the Trial Committee (R. p. 82) and the transcript was incorporated in petitioner's Motion to Quash or Dismiss for Lack of Due Process by Reason of Procedural Irregularities (R. p. 50).

During the adverse examination of the Honorable Secretary and upon advice of counsel, he refused to permit petitioner's counsel to examine the full minutes of the Grievance Committee for the days when petitioner's matter was before the Committee. (Exception 31, R. pp. 105 to 112.)

The trial of the proceeding against petitioner came on for hearing in New Bern, North Carolina, on June 28,

1965 (R. p. 32). Before respondent proceeded with respondent's case, petitioner made the following written and verified motions, which were ruled upon as indicated below:

1. Motion to Quash or Dismiss for lack of Due Process by Reason of Refusal to Disclose Evidence. The Motion was allowed only in a limited fashion and not to the extent and for the purposes stated in said Motion. Petitioner objected and excepted. (Exception #32A, R. pp. 82 and 83.)

2. Motion for Adverse Examination of Members of Grievance Committee. The Motion was denied by the Trial Committee and petitioner excepted. (Exception #33A, R. p. 83.)

3. Motion to Quash or Dismiss for Lack of Due Process by Reason of Procedural Irregularities. The Motion was denied by the Trial Committee. (Exception #34A, R. p. 83.)

4. Renewal of Motions to Strike which were ruled upon at the pre-trial conference of May 28, 1965. (Exceptions #13A, #13B, R. pp. 81 and 83.)

During the presentation of respondent, counsel for respondent offered certain numbered Exhibits into evidence which were received over petitioner's objections. (Exceptions 35 to 67, R. pp. 175 to 189.) The Exhibits were minutes of the Bar Council and Grievance Committee, and the Letter of Notice directed to petitioner. (See Respondent's Exhibits, Exhibits 1 through 4.) Respondent also offered in evidence the entire Record in Civil Action No. 7954, entitled "James Henry White and Wife, Wealthy

White, v. Hattie McCarter and Reginald Lee Frazier, Individually, and Reginald Lee Frazier, Trustee," as respondent's Exhibit 5, including Sub-Exhibits: (a) Complaint; (b) Notice and Summons to petitioner; (c) Notice and Summons to Hattie McCarter; (d) Answer, Cross Action and Counterclaim of Hattie McCarter; (e) Notice and Summons to James Henry White, et ux.; (f) Application for extension of time to file Answer; (g) Answer of petitioner to original Complaint; (h) Reply to cross action, etc., of petitioner; (i) Reply to Cross Actions, etc., of James Henry White, et ux.; (j) Issues with Answers; (k) Judgment signed by Judge Bundy, (l) Judgment of the Supreme Court of North Carolina; (m) Judgment by Judge Hubert E. May. See, also, respondent's Exhibits 5 through 5M in this Court. All of these Exhibits were received over petitioner's objections. (Exceptions 47 to 60, R. pp. 182 to 184.) Respondent's Complaint and the corresponding paragraph or portion of petitioner's Answer to respondent's Complaint (R. pp. 174 to 178). However, respondent offered into evidence paragraphs 10, 14, 16, 17, 22, 23, 24, 27, 29, 31, 32 and 33 of respondent's Complaint and corresponding portions of petitioner's Answer, which only gave qualified admissions of respondent's allegations and referred to designated Further Answers and Defenses annexed to appellant's Answer. See Exceptions 40, 41, 42, 43, 44, 45, 46, 61, 62, 63, 65, 66 (R. pp. 178 to 189). See, also, Complaint and Answer in this proceeding (R. pp. 3 to 38). Petitioner objected to receipt into evidence of this pleading as indicated above herein. At the conclusion of respondent's case, petitioner moved in writing for judgment as of nonsuit or for insufficiency of evidence to prove the allegations. The Motion was not allowed when made and the

Trial Committee reserved ruling upon it. (Exception #14A, R. p. 73.) Petitioner also renewed all Motions made during the trial and all motions made at the pre-trial conference of May 28, 1965. Petitioner offered no evidence (R. p. 83).

On or about the 10th day of January, 1966, petitioner received Notice and copy of the Trial Committee's Report (R. p. 87). The Trial Committee found facts against petitioner in eight numbered Findings of Facts, and, upon such Findings of Facts, made Conclusions of Law against petitioner. In its report the Trial Committee proposed Judgment against petitioner of a twelve (12) months suspension and Judgment against petitioner for the costs of the action.

On or about the 17th day of January, 1966, petitioner filed Exceptions to Report of Trial Committee (R. pp. 127 to 132). Petitioner excepted to each and every finding of fact and conclusion of law of the Trial Committee (Exceptions 1 to 9), and to the action of the Trial Committee in: (1) Overruling petitioner's Motion to Quash or Dismiss for Lack of Due Process by Reason of Refusal to Disclose Evidence (Exception #10); (2) Overruling his Motion for Adverse Examination of Members of the Grievance Committee (Exception #11); (3) Overruling this Motion to Quash or Dismiss for Lack of Due Process by Reason of Procedural Irregularities (Exception #12); (4) Overruling his Motions to strike (Exception #13); (5) Overruling his written Motion for Judgment as of Nonsuit (Exception #14); (6) Failing to grant or rule upon his Motion to Quash or Dismiss by Reason of Racial Discrimination (Exception #15). Other Exceptions of petitioner as made by petitioner during the June 28, 1965, hearing as to reception of evidence, are delineated by the letter "O" in the

copy of Transcript 3 which was attached to the Report of the Trial Committee. These Exceptions are further brought forward in Exceptions 1 to 8 to the Trial Committee's Report.

Petitioner's appeal from the Trial Committee was heard by the Full Bar Council on the 15th day of April, 1966 (R. p. 133). The Council rendered Judgment against petitioner in which it found facts against petitioner and ordered that he be given a reprimand and be taxed with costs (R. pp. 133 to 138). Petitioner appealed to the Superior Court of Craven County and his appeal was heard by Honorable Rudolph Mintz, Judge Presiding, who entered Judgment against petitioner on the 7th day of October, 1966. Upon petitioner's Notice of Appeals of October 13, 1966, the Court made Appeal Entries in which it overruled all of petitioner's Exceptions to the Court's Judgment, to wit, Exceptions numbers 21 through 30 (R. pp. 162 to 174). The Appeal Entries are a part of the Record in this cause.

The Opinion of the Supreme Court of North Carolina was filed as Number 120, March 22, 1967. In its Opinion, the Supreme Court of North Carolina overruled all of petitioner's Exceptions and contentions and affirmed the Judgment of the Superior Court of Craven County, North Carolina.[3]

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[3] See Appendix "A", *infra*. See also *State Bar* v. *Frazier*, 269 N. C. 625, —— S. E. 2d ——.

How the Federal Questions Were Raised and Decided Below

In the Statement of Case of this Petition, petitioner has detailed the raising of his legal objections, all of which were phrased in a constitutional context.[4] The Opinion of the Supreme Court of North Carolina, specifically ruled upon petitioner's constitutional questions, summarized its position in regard thereto in these words:

> "He [petitioner] cites many authorities on unquestionable (but abstract) statements of the law which cannot be argued or debated. No one would deny that every person is entitled to equal protection of the law or that one is entitled to confront his accusers or that hearsay evidence is incompetent and cannot be used to convict.
>
> "But the respondent is confronted with the well recognized principle that it is not difficult to ascertain the law. The difficulty is in applying well established legal rulings to the facts of a particular case. Therein, the respondent fails. The law he quotes is just not pertinent to the facts of this case, for the reason we have stated . . .
>
> "Since the statute provides that the proceedings in the Superior Court shall be in accordance with the laws and rules relating to civil actions in which there has been a reference by consent, the Judge may 'affirm, amend, modify, set aside, make additional findings, and confirm, in whole or in part, or disaffirm the report of a referee. * * * It is the duty of the judge to

[4] See Assignments of Error, Appendix "G", *infra*.

consider the evidence and give his own opinion and conclusion both upon the facts and the law. He is not permitted to do this in a perfunctory way, but he must deliberate and decide as in other cases, use his own faculties in ascertaining the truth, and form his own judgment as to fact and law.' *Anderson* v. *McRae*, 211 N. C. 197, 189 S. E. 639.

"The suspension was within the penalties authorized by the statute and the respondent was ill-advised in appealing from a mere reprimand in view of the overwhelming evidence of his misconduct. Under the statute and all of the decisions, when one appeals or obtains a new trial he runs the risk of loss as well as gain."

The Opinion of the State Supreme Court also ruled upon petitioner's request to view *full* minutes of the Grievance Committee in these words:

"It is possible that the minutes contained references to other complaints against other attorneys, some of which may have been justified. Others may not have been, which would prove nothing. The question here is: Has the *respondent* been guilty of unethical conduct? That other have, or have not been, cannot change the guilt or innocence of Reginald Lee Frazier."

Finally, a reading of the Opinion of the State Supreme Court indicates that the said Court, in its own way, has purported to rule, *ad seriatim*, upon each of petitioner's constitutional questions, as propounded in this Petition.[5]

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[5] See Question Presented, *supra*.

Reasons for Granting the Writ

The instant case presents classic reasons for the granting of the Writ of Certiorari. While no single novel issue may be presented which this Court has not previously ruled upon, the case presents an unbroken chain of constitutional deprivations which culminated in a single, unjust Judgment of disbarment, which Judgment is the product of the state courts' failure to apply the applicable decision of this Court in the many aspects of this case. This fact alone makes the decision below of such variance with constitutional norm as to merit this Court's discretionary jurisdiction upon writ of certiorari.

1. While the disbarment proceeding against petitioner began as a statutory proceeding,[6] it concluded as though it were a judicial proceeding, with the Superior Court Judge displacing the discretion of the Bar Council and substituting that of his own.[7] While this change of the proceeding has "statutory" recognition[8] and was specifically approved by the Opinion of the State Supreme Court, it should be observed that this change has occurred *only because petitioner appealed.* The relevant portion of the

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[6] See Opinion of the State Supreme Court, Appendix "A", where the Court invoked North Carolina General Statutes 84-28 as the statutory basis for the proceeding against petitioner.

[7] See *In Re Burton,* 257 N. C. 534, 126 S. E. 2d 581, where the North Carolina Supreme Court carefully delineated the difference between statutory and judicial disbarment proceedings. The Judgment of the Bar Council was for a reprimand; that of the Superior Court Judge was for suspension for 12 months from law practice.

[8] See North Carolina General Statutes 84-28(3)(f) which is quoted under Constitutional and Statutory Provisions Involved, *supra.*

"enabling" statute upon which the respondent relies is as follows:

> ". . . all proceedings in connection with the charge shall be conducted in the superior court in term in accordance with the laws and rules relating to civil actions in which there is a reference by consent, but neither party shall be entitled to a jury trial by jury . . ." North Carolina General Statutes 84-28 (3)(f).

And North Carolina General Statutes 1-194, which is also set out under Constitutional and Statutory Provisions Involved, *supra*, provides:

> "The referee shall make and deliver a report within the time ordered by the Court, to the clerk of the court in which the action is pending. Either party, during the term or upon ten days' notice to the adverse party out of term, may move the judge to review the report, and set aside, modify or confirm it in whole or in part, and no judgment may be entered on any reference except by order of the Judge." North Carolina General Statutes 1-194.

The change of a proceeding on an appeal was condemned by this Court nearly twenty years ago in *Cole* v. *Arkansas*, 333 U. S. 196, 68 S. Ct. 514, 92 L. Ed. 644, where a conviction was sustained by a state court, on appeal, because the appellate, state court thought that the evidence was sufficient under a charge not made in the trial court. The effort of the legislature to give to the Superior Court *on petitioner's appeal* in a statutory disbarment, the independent, disbarment discretion inherent in the courts (see *In*

Re Burton, supra), falls within the same category as the change involved in the *Cole* case, *supra*. The surprise in this case is even more alarming in view of the circumstance that respondent was granted a Judgment of suspension against petitioner, which it did not seek, but which respondent has vigorously sought to uphold and enforce.[9]

Again, on petitioner's appeal to the Superior Court from the Bar Council's Judgment of "reprimand,"[10] which was heard only on the record made before the Trial Committee and the Bar Council, without right of jury trial or right of introduction of new matter,[11] the substitution of a new and more severe discretion by the appellate tribunal[12] was totally without notice to petitioner and an effective denial of the judicial review which petitioner sought. The right of judicial review of administrative decisions is fundamental in our law and reaches constitutional status where the right to earn a livelihood is involved.[13] To fetter that review with the imposition of a judicial discretion in excess of the discretion of the administrative agency is an uncon-

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[9] The Judgment of the Bar Council was for reprimand. Appendix "C", *infra*. The Judgment of the Superior Court, affirmed by the State Supreme Court, was for suspension. See Appendix "B". Respondent filed a brief in the North Carolina Supreme Court, in support of the Judgment of the Superior Court for suspension. See Appendix "A", *infra*.

[10] See Judgment of the Bar Council, Appendix "C", *infra*.

[11] North Carolina General Statute 84-28(3)(f).

[12] Petitioner appealed from the Bar Council, an administrative agency, to the State Superior Court of Craven County for a judicial review of the Judgment of the Bar Council. See North Carolina General Statute 84-28(3)(f).

[13] See *Wildmer* v. *Committee on Character Fitness*, 373 U. S. 96, 83 S. Ct. 1175, 10 L. ed. 2d 224, where this Court held that denial of the right to practice law could not be sustained upon ex parte statements in absence of a hearing upon character fitness.

stitutional attempt to render the administrative decision "final" and to penalize resort to judicial review.[14] Moreover, that the North Carolina Statute[15] intended to "ham-string" the right of judicial review is apparent from this significant language of the Opinion of the Supreme Court of North Carolina, to wit:

> "The suspension was within the penalties authorized by the statute and the respondent was ill-advised in appealing from a mere reprimand in view of the overwhelming evidence of his misconduct. Under the statute and all of the decisions, when one appeals or obtains a new trial he runs the risk of loss as well as gain."

Finally, without regard to the state of the law upon the question of the power or wisdom of a trial tribunal which

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[14] Compare *Gonzales* v. *United States,* 348 U. S. 407, 75 S. Ct. 409, 99 L. ed. 467. See, also, cases condemning penalties on right of appeal: *Missouri P. R. Co.* v. *Tucker,* 230 U. S. 340, 33 S. Ct. 961, 57 L. ed. 1507; *Chicago, etc. R. Co.* v. *Nye Schneider Fowler Co.,* 260 U. S. 35, 43 S. Ct. 55, 67 L. ed. 115; *Arizona Eastern R. Co.* v. *Head,* 224 P. 1057, 26 Ariz. 259. See, North Carolina General Statutes 143-306 et seq., which provides judicial review over certain administrative agencies but where the Court is not given the discretion to enter a more severe judgment against the party applying for review. See *Louisville etc. R. Co.* v. *Garrett,* 231 U. S. 208, 34 S. Ct. 48, 58 L. ed. 229, which implies the right of judicial review over administrative decisions. Finally, see *Jaffe* v. *State Department of Health,* 135 Conn. 339, 64 A. 2d 330, 6 A. L. R. 2d 664 and *DeMond* v. *Liquor Control Commission,* 129 Conn. 642, 30 A. 2d 547, which declined to interpret state statutes in such manner as to grant to the state Courts the power to substitute the court's discretion for that of administrative agencies. The stated rationale of the above opinions was the avoidance of conflict with "constitutional limitation upon the power of our courts independently to determine administrative matters."

[15] North Carolina General Statutes 84-28(3)(f) as read with North Carolina General Statutes 1-194 therein absorbed.

exacts a heavier penalty upon retrial, it is respectfully submitted that the analogy made in the Opinion of the State Supreme Court is grossly misplaced, inasmuch as, there has been no retrial or reconsideration by the trial tribunal. Compare North Carolina General Statutes 143-315, which deals with other administrative agencies but which specifically protects an applicant for judicial review against the substitution of the judge's discretion.[16]

2. The Opinion of the Supreme Court of North Carolina reveals that petitioner was denied the right to freely inspect and study the minutes of the Grievance Committee of the Bar.[17] Petitioner also requested the right to adversely examine members of the Grievance Committee.[18] The Opinion of the State Supreme Court, as it pertains to these issues, is set out, *supra,* in this Petition.[19] No law is better settled than the principle that due process requires that a defendant have the right and opportunity to prepare his defense.[20]

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[16] See *Clark Equipment Co.* v. *Johnson,* 261 N. C. 269, 134 S. E. 2d 327, where the North Carolina Supreme Court reversed a superior court judgment in which the superior court had substituted its discretion for that of the Tax Review Board.

[17] See Appendix "A", *supra.*

[18] See Report of Trial Committee, Appendix "D", *infra.* Both requests were denied by the Trial Committee and its rulings were affirmed by the Bar Council, the Superior Court and the State Supreme Court.

[19] See How the Federal Questions Were Raised and Decided, this Petition, *supra.*

[20] See *Holt* v. *Virginia,* 381 U. S. 131, 85 S. Ct. 1375; *United States* v. *Rutkin,* 212 F. 2d 641 (3rd Cir. 1954); *Mooney* v. *Holohan,* 294 U. S. 103, 55 S. Ct. 340, 79 L. ed. 741; *Pyle* v. *Kansas,* 317 U. S. 213, 63 S. Ct. 177, 87 L. ed. 214.

3. In the proceedings in the various state tribunals, petitioner was shockingly denied the right to confront an "accuser." Although he was accused of defrauding one Hattie McCarter by the respondent, the fact is beyond traverse that one Hattie McCarter never made a sworn complaint to that effect against petitioner (R. pp. 92 to 94). In the civil action wherein she filed allegations against petitioner for money which she alleged petitioner owed her, she did not hint or allege fraud (Exhibit 5D). It is significant that the instant proceeding did not proceed upon a sworn affidavit as required by the rules of the State Bar.[21] It is also significant that Mrs. Hattie McCarter was alive when respondent filed its complaint against petitioner (R. pp. 92 to 94). See also Record, page 45, paragraph 3. The secretary of respondent testified of having talked to her. In offering her testimony in this proceeding, the respondent made no showing as would authorize reception into evidence of prior recorded testimony in a proper case.

The Opinion of the Court below has attempted to qualify her testimony as admissible prior recorded testimony, in spite of the glaring dissimilarity of issues, by simply saying that the issues were similar.[22] Respondent also introduced into evidence the issues of the Hattie McCarter case, the jury's answers on the verdict, the judgment of the Su-

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[21] See Appendix "F", *infra*, for the Bar Rules. Section 5, subparagraph C(1) and (2) of Article VI seemingly make commencement of a statutory disbarment proceeding wholly dependent upon a "verified complaint." Nevertheless, the Supreme Court of North Carolina has held that a "verified complaint" is not required. See Opinion, below, Appendix "A", *infra*.

[22] For the Hattie McCarter pleading against petitioner, see Exhibit 5D now in this Court. For respondent's pleadings against petitioner, see the Record in this Court, pages 3 to 12.

perior Court and the Opinion of the State Supreme Court upon the appeal in the case.[23]

Petitioner's right to confront accusers and witnesses is protected by the Fourteenth Amendment to the federal constitution. This Court has repeatedly so held.[24] And petitioner's right not to be prejudiced by hearsay reports is equally as well protected by the same constitutional provision.[25]

4. That respondent intended to shift the burden of the instant proceeding to petitioner can be seen by the fact that respondent painstakingly pleaded inadmissible hearsay evidence and hearsay reports, as indicated above. This was done even before Hattie McCarter died. This attempted shift was approved by all of the state tribunals below, insofar as Judgment was rendered against petitioner upon nothing other than hearsay evidence. The Fourteenth Amendment does not allow such an imposition upon a defendant charged as was petitioner.[26]

5. The price which petitioner has paid for failing to prevail in the *White et ux.* v. *Hattie McCarter et al.*, 261 N. C. 362, 134 S. E. 2d 612, was the unfair burden of a disbarment proceeding. Access to the civil courts of the

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[23] Record in this Court, pages 173 to 190.

[24] *Willner* v. *Committee, etc.*, Note 13, *supra*; *Pointer* v. *Texas*, 380 U. S. 40, 85 S. Ct. 1065, 13 L. ed. 2d 923; *Greene* v. *McElroy*, 360 U. S. 474, 79 S. Ct. 1400, 3 L. ed. 2d 1377; *Douglas* v. *Alabama*, 380 U. S. 415, 85 S. Ct. 1074, 13 L. ed. 2d 934.

[25] *Willner* v. *Committee, etc.*, Notes 13 and 24, *supra*.

[26] *Hornsby* v. *Allen*, 326 F. 2d 605 (5th Cir. 1964); *First Unitarian Church of Los Angeles* v. *Los Angeles County*, 357 U. S. 513, 78 S. Ct. 1350, 2 L. ed. 2d 1460.

states has not heretofore been gained by attorneys only upon such a discriminatory and sacrificial basis.[27] The forbearance of the secretary of respondent in awaiting the outcome of the *White* litigation makes it clear that petitioner was to receive a disbarment proceeding, should the courts rule against him in the *White* litigation. The Record before this Court conclusively shows that petitioner was "served" a disbarment proceeding solely and only because of his use of the state civil courts in the *White* case and that the Record in the *White* case was used, in an unadulterated form, to produce the Judgment against petitioner. This was a clear abridgment of petitioner's Privileges and Immunities, as indicated in Note 27 below.

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[27] See the Privileges and Immunities Clause, Amendment Fourteenth to the Federal Constitution. See, *Chambers* v. *Baltimore, etc. R. Co.*, 207 U. S. 142, 28 S. Ct. 34, 52 L. ed. 143. See, Article 6, Clause 2 of the Federal Constitution [the so-called Supremacy Clause]. Compare *Spevak* v. *Kleen*, —— U. S. ——, 87 S. Ct. ——, 17 L. ed. 2d 574, where an attorney was held by this Court, during the Spring, 1967 Term, to have unfetter Fifth Amendment rights as against attempted disbarment for the exercise. See, also, *Garrity* v. *New Jersey*, —— U. S. ——, 87 S. Ct. ——, 17 L. ed. 2d 562.

CONCLUSION

WHEREFORE, for the foregoing reasons, it is respectfully submitted that this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDICES

APPENDIX "A"

Opinion of the Supreme Court of North Carolina

IN THE

SUPREME COURT OF NORTH CAROLINA

SPRING TERM, 1967

No. 120—Craven

THE NORTH CAROLINA STATE BAR,

Complainant,

—v.—

REGINALD LEE FRAZIER, Attorney at Law, New Bern, Craven County, North Carolina,

Respondent.

Appeal by respondent at October 1966 Civil Session of Craven Superior Court, before Mintz, J.

At the October 1963 Session of the Superior Court of Craven County an action was tried, entitled as follows:

> "James Henry White and wife, Wealthy White, v. Hattie McCarter, Reginald L. Frazier, Individually, and Reginald L. Frazier, Trustee."

In it the plaintiffs had alleged that they purchased a piece of property from Mrs. Hattie McCarter for $1250, of which $250 had been paid at the time of the conveyance and the balance of $1000 was secured by a note and deed of trust. The respondent acted as defendant's attorney throughout the transaction, named himself trustee in the deed of trust, and his name was inserted in the note as co-payee with Mrs. McCarter. The plaintiffs alleged that they had made 13

payments of $50 each to Frazier, and that the balance was then $350. They further alleged that they had sought to obtain canceliation of the deed of trust upon payment of $350, and that Mrs. McCarter had refused to accept it. The action was brought to obtain cancellation of the deed of trust upon that payment.

Mrs. McCarter in her answer denied that the plaintiffs had made the payments claimed and in a cross-action asserted that if the payments had been made to Frazier he had failed to account to her for them, and sought judgment over against him for the amount received by him. Frazier denied receiving the payments alleged, and at the trial the jury answered the issues quoted below as follows:

> "Was the defendant, Reginald L. Frazier, acting as attorney and agent of the defendant, Hattie McCarter, in connection with the sale of the lots in question to the plaintiffs, and the collection of the money therefor? Answer: Yes.
>
> "In what amount, if any, are the plaintiffs White indebted to the defendant Hattie McCarter? Answer: $350.00.
>
> "In what amount, if any, is the defendant Hattie McCarter entitled to recover of the defendant Reginald L. Frazier on her cross-action and counterclaim, as alleged? Answer: $428.00."

Judgment was signed upon the verdict and the defendant Frazier appealed to the North Carolina Supreme Court. The judgment was affirmed as reported in 261 N. C. 362, 134 S. E. 2d 612.

The North Carolina State Bar received information about the case and instituted this action against Frazier seeking appropriate punishment for his alleged unethical

and improper conduct. The lengthy complaint setting forth the above facts with full details and with exhibits appended which included the note, the deed of trust, and an alleged tape recording of a conversation between Respondent Frazier and Mrs. McCarter was served upon him. The complaint was verified by E. L. Cannon, Secretary of the North Carolina State Bar.

Frazier filed an answer partially admitting and partially denying the allegations of the complaint, and setting out as defenses his lack of experience in the practice of law; that the transaction in which he drew the note and deed of trust occurred when he had been practicing law less than six months; that his name had been placed in the note by his secretary and without his knowledge; that he immediately remitted to Mrs. McCarter each payment made by the Whites, which totaled $650.00, but that Mrs. McCarter had failed to give him receipts for the payments made to her; that the action of the State Bar was due to the ill will of the Secretary of the Bar toward him and "is a personal vendetta solely by reason of the ill will which the Secretary harbors against this Respondent". He later filed a motion to quash or dismiss the proceeding by reason of racial discrimination.

Respondent requested that a trial committee be appointed by the Supreme Court pursuant to. G. S. 84-28 (3) d 2. A committee of three highly respected attorneys, one of whom was a member of the respondent's race, was appointed by the Chief Justice, who heard the evidence in the case. In the civil action Mrs. McCarter had testified *under oath* and *was cross-examined* by Frazier's attorney (Frazier being *present* at the time) that she got $23 through Frazier three or four times, and $50 three or four times, and that she never received any money directly from the Whites. The Committee reported their findings with appro-

priate details, concluding as a matter of law that the respondent is guilty of corrupt or unprofessional conduct. They thereupon unanimously ordered that Frazier be suspended from the practice of law for a period of 12 months.

Frazier appealed to the Full Council of the State Bar which, after considering the evidence, briefs, and oral argument, overruled the respondent's exceptions to the significant findings of fact made by the Committee, made full findings of fact and held that the respondent was guilty of unethical conduct, and ordered that he be given a reprimand by the Council of the North Carolina State Bar at such time and place so designated by the Council, and that respondent pay the cost connected with the proceeding.

The respondent filed exceptions to the Resolution of the Council and appealed to the Superior Court of Craven County.

The appeal was heard in Superior Court by Hon. Rudolph Mintz, presiding Judge, at the October 1966 Civil Session of Craven Superior Court. It was heard on the full record of the previous proceedings before the Trial Committee and the Council and respondent's exceptions and assignments of error thereto, and upon the briefs and argument of counsel for Complainant and Respondent.

Judge Mintz made full findings of fact which in effect approved and affirmed the findings previously made by the Committee of the State Bar Council and concluded as a matter of law that the respondent is guilty of corrupt or unprofessional conduct in the following particulars:

"(a) That the Respondent did detain without a bona fide claim thereto, money collected in his capacity as attorney for Hattie McCarter in the sum of $428.00, contrary to the provisions of G. S. 84-28 (2)b.

"(b) That the conduct of Respondent in conferring with Hattie McCarter, done without the permission or knowledge of her then counsel, and recording without her permission or knowledge, the conversation, during the pendency of the aforesaid Civil Action No. 7954, was reprehensible, inexcusable, and in violation of the Canons of Ethics, and more particularly Canon 9 as promulgated and adopted by the Council of the North Carolina State Bar, and a flagrant violation of his oath as an attorney."

The Court thereupon ordered that the respondent be suspended from the practice of law for a period of 12 months for his corrupt and unprofessional conduct in detaining without a bona fide claim thereto money collected in his capacity as attorney for Hattie McCarter; and also that he be suspended from the practice of law for a period of six months for his corrupt and unprofessional conduct in violating Canon 9 of the Canons of Ethics of the North Carolina State Bar, the said suspensions to run concurrently, and that the respondent pay the costs.

The defendant noted exceptions to Judge Mintz' findings of fact, conclusions of law and judgment, and thereupon appealed to the Supreme Court.

ROBERT D. ROUSE, JR.
For Complainant Appellee

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MOSES BURT, JR.
HERMAN L. TAYLOR
JOHN H. WHEELER
J. LEVONNE CHAMBERS
LISBON C. BERRY, JR.
EARL WHITTED, JR.
CHARLES MORGAN, JR.
For Respondent Appellant

Pless, J.: G. S. 84-28 in pertinent part is as follows:

"Discipline and Disbarment. — The council or any committee of its members appointed for that purpose, or designated by the Supreme Court,

(1) Shall have jurisdiction to hear and determine all complaints, allegations, or charges of malpractice, corrupt or unprofessional conduct, or the violation or professional ethics, made against any member of the North Carolina State Bar;

(2) May administer the punishments of private reprimand, suspension from the practice of law for a period not exceeding twelve months, and disbarment as the case shall in their judgment warrant, for any of the following causes:

a. Commission of a criminal offense showing professional unfitness;

b. Detention without a bona fide claim thereto of property received or money collected in any fiduciary capacity;

c. Soliciting professional business;

d. Conduct involving willful deceit or fraud or any other unprofessional conduct;

e. Detention without a bona fide claim thereto of property received or money collected in the capacity of attorney;

f. The violation of any of the canons of ethics which have been adopted and promulgated by the council of the North Carolina State Bar."

The Canons of Ethics of the North Carolina State Bar, Art. X, Canon 9, is as follows:

"A lawyer should not in any way communicate upon the subject or controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law."

The respondent was found guilty of violating both the above, and appropriate punishment has been ordered. He groups his exceptions and assignments of error under five arguments.

The first is that the proceedings were at all times unlawful and in excess of the jurisdiction of the North Carolina State Bar and the Craven County Superior Court. However, the provisions quoted above give the State Bar jurisdiction in such cases and provide for punishment.

G. S. 84-28 (3) f provides that an appeal from the proceedings and judgment of the Council may be had to the Superior Court of the County in which the person charged resides if he resides within the State, and that "all proceedings in connection with the charge shall be conducted in the Superior Court in term in accordance with the laws and rules relating to civil actions in which there has been a reference by consent, but neither party shall be entitled to a trial by jury. Both parties shall have the right to appeal to the Supreme Court in accordance with the procedure permitting appeals in civil actions".

This argument and the exceptions relating thereto are not sustained.

He complains that no layman, and especially the person whom he defrauded, if the jury verdict is correct, made any complaint against him. This is not required. The object

of the regulations is to protect the public from unethical conduct by one vested with an attorney's license. A well educated lawyer, whose position and achievement bring trusting persons to his office in a search of guidance and protection, has the duty of conducting himself with the highest degree of honor, integrity and ethics. The duty of patrolling the conduct of licensed attorneys is placed on the Council of the State Bar, and there are no requirements that it shall be limited to any particular source for its information or instigation of proceedings.

Further complaint is made that the respondent was denied the right to freely inspect, use and study the minutes of the Grievance Committee of the Bar. He was offered the right to inspect the minutes as they related to him, but he replied that "If we cannot have *all* (emphasis ours) the minutes, we do not care to see what we have before us".

On several occasions the respondent's attorneys asked for the minutes "in order that we could compare what was done in Mr. Frazier's case and what was done in the other cases".

At another time they said: "We want to see what disciplinary actions were taken on that date; what type of actions were taken; who the names of the attorneys were, and so that we can inquire what the bases of them is so we can determine whether or not Frazier is being accorded the same protection and the same treatment as any other lawyer."

Also they said: "We have alleged that this man is seeking equal protection of the laws and the equal treatment and the comparison of the treatment of this defendant with other defendants who were discussed at the time of the Bar meetings."

In response to these motions and statements, counsel for the Bar tendered certified copies of the minutes as they relate to Frazier and stated that in his opinion he would not have legal authority to provide the respondent with certified copies of the minutes in their entirety. He said: "It may be that you do have the right to examine the contents of those records in their entirety; if so, I would not want to voluntarily agree. I would prefer that you have an appropriate subpoena *duces tecum* issued and that an appropriate court official order the contents of those minutes disclosed * * * I will now offer to permit a representative of your counsel to examine those minutes as they relate to your client." The respondent declined the offer and did not pursue the suggestion that he seek a subpoena *duces tecum.*

It is possible that the minutes contained references to other complaints against other attorneys, some of which may have been justified. Others may not have been, which would prove nothing. The question here is: Has the *respondent* been guilty of unethical conduct? That others have, or have not been, cannot change the guilt or innocence of Reginald Lee Frazier.

The respondent also excepts to the refusal to strike a number of allegations in the complaint against him. A careful perusal of all of them shows that they are relevant and competent in stating the position of the Bar Council and in informing the respondent of the charges against him.

Argument IV of the respondent's brief relates to "Reception in evidence of hearsay evidence pertaining to a civil action in which parties, issues and proceedings are dissimilar" to those in the instant case. While the parties are not technically the same, the inquiry is entirely based on the

alleged unethical conduct of the respondent in his dealings with his aged and illiterate client, Mrs. Hattie McCarter. So was the civil action in which he was found by the jury to have withheld the money of his client while acting as her agent and attorney.

Mrs. McCarter died after the trial of the civil case and before the hearings of the Committee. Her evidence at the trial is clearly admissible in this proceeding. It meets all the requirements so clearly and concisely stated in Stansbury on Evidence, 2d Ed. Sec. 145, regarding "the testimony of a witness at a former trial or other judicial hearing (which) may be given in evidence at a subsequent trial, whether civil or criminal, if it complies with all of the following conditions:

"(1) If the witness has since died, or become incapacitated by insanity or illness, or has removed from the jurisdiction or has otherwise become unavailable to testify as a witness at the present trial.

"(2) If the proceeding at which he testified was a former trial of the same cause, or a preliminary stage of the same trial, or the trial of another cause involving the same issue and subject matter as the one to which his evidence is directed at the present trial.

"(3) If the parties at the former trial were the same as those at the present trial, or in privity with them, or if the situation was such that the party against whom the evidence was then offered had the same opportunity and motive to cross-examine the witness as the party against whom it is now offered has at the present trial."

In view of this we hold that the other features of the respondent's argument IV necessarily fail.

In argument V the respondent largely recapitulates and repeats the foregoing conditions, all of which have been considered and rejected.

The respondent's violation of Canon 9 is hardly contested. He admitted that, while the civil action was pending and Mrs. McCarter was represented by other counsel, he not only "communicated upon the subject or controversy", but made a tape recording of his conversation with her, without her knowledge.

Frazier testified that she came to his office after the civil action had been instituted for her by the firm of Ward & Ward, attorneys of New Bern, and that he discussed the case with her. From the recording it is seen that he told Mrs. McCarter that "We have got to get the Whites straightened out about those lots"; that Mrs. McCarter said she had not received the money that the Whites claimed they had given her—"they have not give me the money". He asked her if she believed they had hoodwinked her into something, to which she replied that she knew they did, and that she had told Frazier they "would hoodoo him". She also said that Frazier had authority to receive the money for her; that he was her lawyer; that the Whites were supposed to pay Frazier the money and he was supposed to bring it to her, and that he did. Frazier asked her the following question: "I just wanted to establish that you came to me and hired me as your lawyer to go by and pick up the money for you and that I would bring the money to your house when I picked it up when they did pay me?" She answered: "When they did pay and give it to you." (It also appears that Frazier communicated with her at another time in regard to the matter).

The Secretary of the Bar testified, without objection, that after the civil trial of *White* v. *McCarter* "I talked to

Hattie McCarter and she advised me that everything she stated was true and that Frazier had taken her money and, further, that he had been to see her and that he had asked her not to do anything in connection with this, and he said he was going to lose his license and that he was going to New York".

Judge Mintz made full and complete findings which in effect approved and affirmed the findings and conclusions of the State Bar Council, and made additional findings as follows:

"IX. That Reginald Lee Frazier detained without a *bona fide* claim thereto money in the sum of $428.00 belonging to Hattie McCarter and collected in his capacity as attorney.

"X. That the Respondent violated the laws of the State of North Carolina, and specifically G. S. 84-28 (2) b in the collection and retaining of the sum of $428.00 for Hattie McCarter in his capacity as attorney.

"XI. That the Respondent violated the Canons of Ethics which have been promulgated and adopted by the Council of the North Carolina State Bar, and specifically Canon No. 9 in conferring with Hattie McCarter during the pendency of the aforesaid Civil Action No. 7954.

"That upon the foregoing findings of fact, and the evidence offered in this proceeding, the Court concludes as a matter of law that the Respondent is guilty of corrupt or unprofessional conduct in the following particulars:

"(a) That the Respondent did detain without a *bona fide* claim thereto, money collected in his capacity as attorney for Hattie McCarter in the sum of $428.00 contrary to the provisions of G. S. 84-28 (2) b.

"(b) That the conduct of Respondent in conferring with Hattie McCarter, done without the permission or knowledge of her then counsel, and recording without her permission or knowledge, the conversation during the pendency of the aforesaid Civil Action No. 7954, was reprehensible, inexcusable, and in violation of the Canons of Ethics, and more particularly Canon 9 as promulgated and adopted by the Council of the North Carolina State Bar, and a flagrant violation of his oath as an attorney."

He thereupon adjudged that Frazier be suspended from the practice of law for a period of 12 months "for his corrupt and unprofessional conduct in detaining without a *bona fide* claim thereto money collected in his capacity as attorney for Hattie McCarter", and that he be suspended from the practice of law for 6 months "for his corrupt and unprofessional conduct in violating Canon 9 of the Canons of Ethics of the North Carolina State Bar"; with the suspensions to run concurrently and the respondent pay the costs.

The respondent's complaint that the judgment of Judge Mintz in which the punishment from which he had appealed was greater than that imposed by the Council cannot avail him.

Since the statute provides that the proceedings in the Superior Court shall be in accordance with the laws and rules relating to civil actions in which there has been a reference by consent, the Judge may "affirm, amend, modify, set aside, make additional findings, and confirm, in whole or in part, or disaffirm the report of a referee. * * * It is the duty of the judge to consider the evidence and give his own opinion and conclusion, both upon the facts and the law. He is not permitted to do this in a perfunctory way, but he must deliberate and decide as in

other cases, use his own faculties in ascertaining the truth, and form his own judgment as to fact and law." *Anderson* v. *McRae,* 211 N. C. 197, 189 S. E. 639.

The suspension was within the penalties authorized by the statute and the respondent was ill-advised in appealing from a mere reprimand in view of the overwhelming evidence of his misconduct. Under the statute and all of the decisions, when one appeals or obtains a new trial he runs the risk of loss as well as gain. In *S.* v. *White,* 262 N. C. 52, 136 S. E. 2d 205, the defendant was convicted of robbery and was sentenced to serve ten years. He later was granted a new trial at his request and was again found guilty as charged in the indictment. He was thereupon ordered imprisoned for a term of not less than 12 nor more than 15 years. He took exception to the lengthier sentence in the second case, and Parker, J. (now C. J.), said: "Defendant having been convicted of the same offense on the second trial on the same indictment, a heavier sentence may be imposed than was imposed on the first trial." He quoted from *Hobbs* v. *State,* 231 Md. 533, 191 Atl. 2d 238, Cert. den., 375 U. S. 914, 11 L.Ed. 2d 153: " 'In asking for and receiving a new trial, appellant must accept the hazards as well as the benefits resulting therefrom.' " We quote further from *S.* v. *White, supra,* "In *Bohannon* v. *Dist. of Columbia,* 99 Atl. 2d 647 * * * the Court accurately said: 'We readily appreciate appellant's feeling that the obtaining of a new trial after the first conviction was a hollow victory, since it resulted in a second conviction and a fine ten times as much as the one first imposed. This, however, was a risk he took, and the second Judge was not bound to impose the same fine given by the first Judge.' "

Later on, Chief Justice Parker said: "When defendant, at his request, obtained a new trial hoping to be set free

or obtain a lighter sentence, he accepted the hazard of receiving a heavier sentence if convicted at the new trial of the same identical offense, and this is not a denial to him of any constitutional right as contended by him."

In *S.* v. *Correll,* 229 N. C. 640,.50 S. E. 2d 717, the defendant was convicted of manslaughter and given a sentence of 3 to 5 years in State Prison. Upon appeal he was awarded a new trial, in which he was convicted of murder in the second degree and received a prison sentence of not less than 7 nor more than 10 years. Upon his appeal he took exception to his conviction of a higher offense and the imposition of a longer prison sentence. The Court overruled these exceptions and affirmed the later judgment.

While the cases cited deal with criminal cases, they are all the more applicable to this case inasmuch as the Court would deal with the imprisonment of a citizen with even more care and consideration than it would give one not involving as great penalty. The Judge was of opinion, and justly so, that the reprehensible conduct, or misconduct, of the respondent justified more severe measures than a mere reprimand and suspended his right to practice law for 12 months. That cannot be called cruel and unusual or unjustified.

The respondent in reply to the charges made against him, in effect, entered a plea of confession and avoidance. While he did not admit his guilt, it was conclusively shown.

However, he seeks to avoid responsibility on the following unimpressive grounds. He claims he was inexperienced and had been practicing law less than six months when he drew the papers for Mrs. McCarter and the payments to him, for her, began. Inexperience in the legal profession cannot excuse what amounts to embezzlement. Dishonesty and breach of trust may be committed by anyone, and no

person needs a law license or experience in the practice of law to know that dishonesty and crookedness are wrong.

He cites many authorities on unquestionable (but abstract) statements of the law which cannot be argued or debated. No one would deny that every person is entitled to equal protection of the law, or that one is entitled to confront his accusers, or that hearsay evidence is incompetent and cannot be used to convict.

But the respondent is confronted with the well-recognized principle that it is not difficult to ascertain the law. The difficulty is in applying well established legal rulings to the facts of a particular case. Therein, the respondent fails. The law he quotes is just not pertinent to the facts of this case, for the reasons we have stated.

He complains that he has been singled out for prosecution; that others have been guilty of unethical conduct who have not been punished or who have not received as severe punishment as did he, and, in effect, because all have not been prosecuted and punished, he should not be.

It is possible that others have not been apprehended, but if in the effort to enforce a high standard of conduct and ethics the Council should be required in each case to show the facts and results in every similar case it had investigated, the inquiry would go on endlessly.

This is equivalent to the position that until all murderers, robbers, and other criminals have been convicted and punished, the remainder, even though their guilt is clearly established, should not be either. The fallacy of this position is apparent from a statement of his contentions.

In his trials the respondent adopted as his tactics the old game of "trying the Solicitor". Upon the theory that the best defense is a good offense the respondent set out to try the State Bar, its Council, its Secretary, and even

the completely unconnected North Carolina Bar Association. He should not be surprised that he, rather than they, was tried.

And finally he seeks to establish that he is being persecuted because of his race. Completely ignoring that the object of his dishonesty and greed and the one whom the Court in the civil action protected, was an aged, trusting and uneducated old lady—of his own race!

In the proceedings and judgment below there is no error.

Affirmed.

APPENDIX "B"

Judgment of the Superior Court of Craven County

IN THE SUPERIOR COURT

NORTH CAROLINA
CRAVEN COUNTY

THE NORTH CAROLINA STATE BAR,

Complainant,

—v.—

REGINALD LEE FRAZIER, Attorney at Law, New Bern, Craven County, North Carolina,

Respondent.

THIS CAUSE came on to be heard and was heard before the undersigned, Rudolph I. Mintz, Judge of the Superior Court, assigned to hold the Courts of the Third Judicial District for the Fall Sessions of 1966 at the October Civil Session of the Craven County Superior Court upon the appeal and exceptions filed by the Respondent to the findings, conclusions, and judgment of the North Carolina State Bar Council, sometimes hereinafter referred to as the "Council," and the exceptions brought forward by the Respondent to the findings, conclusions, and judgment of the Trial Committee. This cause was heard before the undersigned on the record, including: orders; pleadings; motions; Complainant's evidence and exhibits introduced at the hearing before the Trial Committee; findings, conclusions, and recommendations of Trial Committee, and

Respondent's exceptions thereto; findings, conclusions, and judgment of the Council, and Respondent's exceptions and assignments of error thereto; and upon the briefs and argument of counsel for Complainant and Respondent.

The Court takes notice that upon stipulation of the parties the aforesaid record and briefs of counsel were furnished to the Court for study and consideration prior to the date set for this hearing.

After reading and giving due consideration to the entire record and briefs of counsel, and after hearing oral arguments, the Court affirms the following findings of fact made by the Council of the North Carolina State Bar and entered on April 15, 1966:

I. The North Carolina State Bar on December 14, 1964, filed a complaint against Reginald Lee Frazier, Attorney at Law, New Bern, Craven County, North Carolina, alleging that the Respondent while acting as Trustee in a deed of trust and as attorney at law did unlawfully and wilfully—

(a) detain without a bona fide claim thereto money collected in his capacity as attorney;

(b) engage in conduct involving wilful deceit and fraud and other unprofessional conduct;

(c) detain without bona fide claim thereto property and money collected in a fiduciary capacity;

(d) did violate the Canons of Ethics which have been adopted and promulgated by the Council of The North Carolina State Bar.

II. That the Respondent passed his Bar examination August 5, 1960 and was duly admitted to The North Carolina Bar and in the month of June 1961 was engaged in the practice of law in Craven County, North Carolina.

III. That in June 1961 Respondent prepared a deed of trust from James Henry White and wife, Wealthy White, to secure the payment of a $1,000.00 note payable to Hattie McCarter, party of the third part in said deed of trust, and the note prepared and secured thereby was made payable to "Hattie McCarter and Reginald L. Frazier"; that the act of Respondent in making himself one of the payees in the note appears to have been due to inexperience of Respondent at the time in preparation of deeds of trust and notes.

IV. That the Respondent collected payments on said note from time to time.

V. That subsequently James Henry White and wife, Wealthy White, instituted action in the Superior Court of Craven County, North Carolina, the same being Civil Action No. 7954, against Hattie McCarter and Reginald Lee Frazier, individually, and Reginald Lee Frazier, Trustee, alleging in substance that they owed to Hattie McCarter balance of $350.00 on said note, without interest; that she refused to accept it in settlement of the deed of trust and seeking cancellation of the deed of trust upon the payment of $350.00 in cash. Hattie McCarter filed answer in said action and alleged as a basis of a cross-action against the Respondent that she recover of the Respondent, Reginald Lee Frazier, such monies as may be shown to the Court as having been paid to him by the plaintiffs in that action for the defendant, Hattie McCarter. The Respondent, Reginald Lee Frazier, filed answer to the cross-action of Hattie McCarter, denying the counter-claim and cross-action of Hattie McCarter. Upon the trial of the foregoing action the following issues were submitted to the jury and answered by the jury as follows:

QUESTION: Was the defendant, Reginald L. Frazier, acting as attorney and agent of the defendant, Hattie McCarter, in connection with the sale of the lots in question to the plaintiffs, and the collection of the money therefor?

ANSWER: Yes.

QUESTION: In what amount, if any, are the plaintiffs, White, indebted to the defendant, Hattie McCarter?

ANSWER: $350.00. Without interest.

QUESTION: In what amount, if any, is the defendant, Hattie McCarter, entitled to recover of the defendant, Reginald L. Frazier, on her cross-action and counterclaim, as alleged?

ANSWER: $428.00.

The Respondent appealed from the judgment of the Superior Court of Craven County, North Carolina, entered upon the trial of the foregoing action, and the Court in the opinion reported in 261 NC 362 stated in part as follows:

"McCarter's cross-action against Frazier raises the simple question whether Frazier had fully accounted for the $900.00 collected by him and, if not, the amount of his default. The Court placed the burden upon McCarter to satisfy the jury by the greater weight of the evidence that Frazier is indebted to her and the amount of the indebtedness. Of this, Frazier is in no position to complain. The purport of his pleadings is that he collected $900.00 for McCarter and paid it to her in full. Payment is an affirmative plea and the burden of showing payment is on the one who relies on payment as a defense."

The Court found no error in the trial in Superior Court.

VI. That during the pendency of the foregoing Civil Action No. 7954 and after cross-action was asserted by Hattie McCarter against the Respondent, the Respondent had a conversation with Hattie McCarter in his office concerning the subject matter of the pending civil action and which conversation was recorded without the knowledge of Hattie McCarter. This conversation is attached to the complaint filed and marked "Exhibit C."

VII. That Reginald Lee Frazier was acting as attorney and agent of the said Hattie McCarter in connection with the sale of the lots to the plaintiffs in that action and in the collection of the money therefor.

And the Court makes additional findings of fact as follows:

VIII. That the conversation aforesaid was recorded without the permission or knowledge of Hattie McCarter; that at the time of said conversation the said Hattie McCarter was represented by counsel; and said conversation was had without the knowledge or consent of said counsel.

IX. That Reginald Lee Frazier detained without a bona fide claim thereto money in the sum of $428.00 belonging to Hattie McCarter and collected in his capacity as attorney.

X. That the Respondent violated the laws of the State of North Carolina, and specifically G. S. §4-28(2)b in the collection and retaining of the sum of $428.00 for Hattie McCarter in his capacity as attorney.

XI. That the Respondent violated the Canons of Ethics which have been promulgated and adopted by the Council of the North Carolina State Bar, and specifically Canon

No. 9 in conferring with Hattie McCarter during the pendency of the aforesaid Civil Action No. 7954.

That upon the foregoing Findings of Fact, and the evidence offered in this proceeding, the Court concludes as a matter of law that the Respondent is guilty of corrupt or unprofessional conduct in the following particulars:

(a) That the Respondent did detain without a bona fide claim thereto, money collected in his capacity as attorney for Hattie McCarter in the sum of $428.00, contrary to the provisions of G. S. 84-28 (2)b.

(b) That the conduct of Respondent in conferring with Hattie McCarter, done without the permission or knowledge of her then counsel, and recording without her permission or knowledge, the conversation during the pendency of the aforesaid Civil Action No. 7954, was reprehensible, inexcusable, and in violation of the Canons of Ethics, and more particularly Canon 9 as promulgated and adopted by the Council of the North Carolina State Bar, and a flagrant violation of his oath as an attorney.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That each exception by the Respondent to the findings, conclusions, and judgments of the North Carolina State Bar Council and Trial Committee in this cause insofar as the findings, conclusions, and judgments of the said Council and Trial Committee do not conform to this judgment are sustained. Each exception by Respondent to the findings, conclusions, and judgments of the Council and Trial Committee in this cause insofar as the findings and conclusions of said Council and Trial Committee do conform to this judgment are overruled.

2. That pursuant to General Statutes Article 4, Chapter 84, the Respondent, Reginald Lee Frazier, be and he is hereby suspended from the practice of law for a period of twelve (12) months, next following the date of the filing of this judgment, for his corrupt and unprofessional conduct in detaining without a bona fide claim thereto money collected in his capacity as attorney for Hattie McCarter as set forth above.

3. That Reginald Lee Frazier be and he is hereby suspended from the practice of law for a period of six (6) months following the date of the filing of this judgment for his corrupt and unprofessional conduct in violating Canon 9 of the Canons of Ethics of the North Carolina State Bar, as set forth above.

4. That said suspensions shall run concurrently.

5. That the Respondent shall pay the costs of this action to be taxed by the Council of the North Carolina State Bar and the Clerk of the Superior Court of Craven County.

6. That a certified copy of this judgment be forwarded to the Clerk of the Supreme Court of North Carolina and to the offices of the North Carolina State Bar.

Done at New Bern, North Carolina, this the 7th day of October, 1966.

RUDOLPH I. MINTZ
Judge Presiding

NORTH CAROLINA
CRAVEN COUNTY

I, W. B. FLANNER, Clerk of the Superior Court in and for said state and county aforesaid, do hereby certify that the foregoing and annexed is a true and correct copy of Judgment THE NORTH CAROLINA STATE BAR vs. REGINALD LEE FRAZIER, Attorney at Law, New Bern, Craven County, North Carolina as the same is taken from and compared with the original now on file in the office of the Clerk of Superior Court of Craven County.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said Court.

Done in office at New Bern, North Carolina, this the 11 day of October, 1966.

W. B. FLANNER, *Clerk Superior Court*
Ex Officio Judge of Probate

By: JOANNA W. AVERETTE
(Deputy) Clerk Superior Court

APPENDIX "C"

Judgment of the Full Council of the North Carolina State Bar

BEFORE THE COUNCIL OF THE NORTH CAROLINA STATE BAR

NORTH CAROLINA
CRAVEN COUNTY

THE NORTH CAROLINA STATE BAR,

Complainant,

—v.—

REGINALD LEE FRAZIER, Attorney at Law, New Bern, Craven County, North Carolina,

Respondent.

THIS MATTER coming on to be heard before the Council of The North Carolina State Bar at its regular quarterly meeting on the 15th day of April, 1966, and it appearing to the Council upon the motion of the attorney for the Complainant that at the hearing of this proceeding a transcript of a recorded conversation between the Respondent and one Hattie McCarter concerning the subject matter of a then pending civil action No. 7954 of a cross-action between Hattie McCarter and the Respondent was introduced by Complainant as evidence in this disciplinary proceeding. This transcript was also identified as Exhibit "C" of the Complainant's Complaint. The Council was informed that in preparing the copies of the exhibits for consideration by the Council copies of the recorded transcript was left out

through error, and requested that it be added as an exhibit of the evidence considered at the hearing in this proceeding. It was pointed out that the Exhibit "C" was attached to the Complaint which was a part of the record proper which each member of the Council had before it for consideration of this proceeding. The record was corrected to include the copy of the transcript of the recorded conversation as one of the exhibits introduced at the hearing. And this proceeding being heard on the Report of the Trial Committee appointed by the Supreme Court of North Carolina, and its Findings, Conclusions and Recommendations, and the briefs and oral argument of counsel for the Complainant and counsel for the Respondent, and the Exceptions of the Respondent to the Report of the Trial Committee, and upon consideration of the entire record, the following resolution was adopted:

"RESOLVED: The Council concludes that the Respondent's Exceptions, designated as 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, filed before the Council of The North Carolina State Bar to the Findings, Conclusions, and Recommendations of the Trial Committee appointed by the Supreme Court should be, and they are hereby overruled and denied.

"RESOLVED: The Council makes the following Findings of Fact:

"I. That the North Carolina State Bar on December 14, 1964, filed a complaint against Reginald Lee Frazier, Attorney at Law, New Bern, Craven County, North Carolina, alleging that the respondent while acting as trustee in a deed of trust and as attorney at law did unlawfully and wilfully—(a) detain without a bona fide claim thereto money collected in his capac-

ity as attorney; (b) engage in conduct involving wilful deceit and fraud and other unprofessional conduct; (c) detain without bona fide claim thereto property and money collected in a fiduciary capacity; (d) did violate the Canons of Ethics which have been adopted and promulgated by the Council of The North Carolina State Bar.

"II. That the respondent passed his Bar examination August 5, 1960, and was duly admitted to the North Carolina Bar and in the month of June, 1961, was engaged in the practice of law in Craven County, North Carolina.

"III. That in June, 1961, respondent prepared a deed of trust from James Henry White and wife, Wealthy White, to secure the payment of a $1000.00 note payable to Hattie McCarter, party of the third part in said deed of trust, and the note prepared and secured thereby was made payable to 'Hattie McCarter and Reginald L. Frazier'; that the act of respondent in making himself one of the payees in the note appears to have been due to inexperience of respondent at the time in preparation of deeds of trust and notes.

"IV. That the respondent collected payments on said note from time to time.

"V. That subsequently James Henry White and wife, Wealthy White, instituted action in the Superior Court of Craven County, North Carolina, the same being Civil Action No. 7954, against Hattie McCarter and Reginald Lee Frazier, individually, and Reginald Lee Frazier, trustee, alleging in substance that they owed to Hattie McCarter balance of $350.00 on said

note, without interest; that she refused to accept it in settlement of the deed of trust and seeking cancellation of the deed of trust upon the payment of $350.00 in cash. Hattie McCarter filed answer in said action and alleged as a basis of a cross-action against the respondent that she recover of the respondent, Reginald Lee Frazier, such monies as may be shown to the Court as having been paid to him by the plaintiffs in that action for the defendant, Hattie McCarter. The respondent, Reginald Lee Frazier, filed answer to the cross-action of Hattie McCarter, denying the counterclaim and cross-action of Hattie McCarter. Upon the trial of the foregoing action the following issues were submitted to the jury and answered by the jury as follows:

"QUESTION: Was the defendant, Reginald L. Frazier, acting as attorney and agent of the defendant, Hattie McCarter, in connection with the sale of the lots in question to the plaintiffs, and the collection of the money therefor?

"ANSWER: Yes.

"QUESTION: In what amount, if any, are the plaintiffs, White, indebted to the defendant, Hattie McCarter?

"ANSWER: $350.00. Without interest.

"QUESTION: In what amount, if any, is the defendant, Hattie McCarter, entitled to recover of the defendant, Reginald L. Frazier, on her cross-action and counterclaim, as alleged?

"ANSWER: $428.00.

"The respondent appealed from the judgment of the Superior Court of Craven County, North Carolina,

entered upon the trial of the foregoing action, and the Supreme Court in the opinion reported in *261 NC 362* stated in part as follows:

> 'McCarter's cross-action against Frazier raises the simple question whether Frazier had fully accounted for the $900.00 collected by him and, if not, the amount of his default. The Court placed the burden upon McCarter to satisfy the jury by the greater weight of the evidence that Frazier is indebted to her and the amount of the indebtedness. Of this, Frazier is in no position to complain. The purport of his pleadings is that he collected $900.00 for McCarter and paid it to her in full. Payment is an affirmative plea and the burden of showing payment is on the one who relies on payment as a defense.'

"The Court found no error in the trial in Superior Court.

"VI. That during the pendency of the foregoing Civil Action No. 7954 and after cross-action was asserted by Hattie McCarter against the respondent, the respondent had a conversation with Hattie McCarter in his office concerning the subject matter of the pending civil action and which conversation was recorded without the knowledge of Hattie McCarter. This conversation is attached to the complaint filed and marked 'Exhibit C'.

"VII. That upon the evidence offered by the complainant, which is supported by the jury verdict in the foregoing Civil Action No. 7954, the Council finds that Reginald Lee Frazier was acting as attorney and

agent of the said Hattie McCarter in connection with the sale of the lots to the plaintiffs in that action and in the collection of the money therefor.

"VIII. That the respondent violated the Canons of Ethics which have been promulgated and adopted by the Council of The North Carolina State Bar in conferring with Hattie McCarter during the pendency of the aforesaid Civil Action No. 7954.

"The Council concludes:

"1. That upon the foregoing Findings of Fact and the evidence offered in this proceeding the respondent is guilty of unprofessional conduct in conferring with Hattie McCarter during the pendency of the aforesaid Civil Action No. 7954, and is in violation of Canon No. 9 as promulgated and adopted by the Council of The North Carolina State Bar, and for such conduct should be reprimanded.

"The Council further resolves that the respondent pay the costs of this action, the same to be taxed by the Council of The State Bar.

"The Council further resolves that the President be directed to enter a proper order for the execution of these resolutions."

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the said Reginald Lee Frazier be given a reprimand by the Council of The North Carolina State Bar at such time and place so designated by the Council; and

That the respondent, Reginald Lee Frazier, is taxed with the costs connected with these proceedings in the amount of One Thousand Seven Hundred Eighty and 53/100

($1,780.53) which does not include attorney's fee for the counsel representing the North Carolina State Bar; and

That the said One Thousand Seven Hundred Eighty and 53/100 ($1,780.53) be paid to The North Carolina State Bar, Justice Building, Raleigh, North Carolina, by the respondent. The statement of said costs is herewith attached to this Judgment and Order.

IT IS FURTHER ORDERED that a certified copy of this Judgment be forwarded to the Clerk of the Supreme Court of North Carolina and to the Clerk of Superior Court of Craven County, North Carolina.

BY ORDER OF THE COUNCIL, this the 15th day of April, 1966.

/s/ J. KENYON WILSON, JR., *President*
The North Carolina State Bar

BEFORE THE COUNCIL OF THE NORTH CAROLINA STATE BAR

NORTH CAROLINA
CRAVEN COUNTY

THE NORTH CAROLINA STATE BAR,

Complainant,

—v.—

REGINALD LEE FRAZIER, Attorney at Law, New Bern, Craven County, North Carolina,

Respondent.

ITEMIZED STATEMENT OF COST OF PROCEEDINGS

1.	Sheriff of Craven County—Service of Summons, Notice and Complaint on Respondent 12/17/64	$ 1.00
2.	U. S. Post Office—Registered Return Receipt Delivery to Respondent of Certification to Supreme Court of Respondent's Request for Trial Committee to be appointed by Supreme Court, 1/29/65	.75
3.	Sheriff of Craven County—Service of Complainant's Motion and Reply on Respondent, 2/2/65	1.00
4.	U. S. Post Office—Registered Return Receipt Delivery to Trial Committee of Order of Supreme Court of their appointment, 2/22/65	2.25

5. Travel Expense of Trial Committee for Pre-Trial conference in New Bern, N. C., 5/28/65 ..... 40.80

6. Sheriff of Craven County—Service of Summonses on James H. White and wife, Wealthy White, and Kennedy W. Ward, 6/24/65 3.00

7. James H. White and Wife, Wealthy White —Witness fees for hearing on 6/28/65 ($5.00 each) 10.00

8. Travel Expense of Trial Committee—For hearing in New Bern, N. C. 6/28/65 ..... 68.69

9. Clifton R. Hood, Court Reporter—Original and 6 copies of Pre-Trial Conference, Adverse Examination of Secretary of N. C. State Bar, Hearing of the Proceeding (Pd. 8/24/65) 491.72

10. N. C. State Bar for duplicating 7 copies of original exhibits introduced at hearing for the trial committee and Respondent, 113 pages x 7 x 10¢ per copy 79.10

11. U. S. Post Office—Registered, Return Receipt Trial Committee Report on Respondent's Attorney 1/10/66 ..... 1.10

12. Sheriff of Craven County—Service of Notice of Hearing before the Council of Respondent's Appeal from Trial Committee's Report on Respondent 3/25/66 ..... 1.00

13. N. C. State Bar for Duplicating 38 copies and binding supplies of Record and Exhibits,

	Trial Committee's Report, Respondent's Exceptions; Re: Respondent's appeal from Trial Committee's Report to full Council Meeting, 4/15/66, 203 pages x 38 copies x 10¢	$791.40	
	Binding Supplies for 38 copies Record & 38 copies Exhibits	41.71	833.11
14.	Roy Palmer—Duplicating Service, Raleigh, N. C., 40 copies Transcript of Pre-Trial Conference, Adverse Examination and Hearing; Re: Respondent's Appeal from Trial Committee's Report to Full Council Meeting, 4/15/66		195.55
	Binding Supplies of 40 copies of Transcript		22.00
15.	U. S. Post Office—Parcel Post, Insured Delivery to each member of the Council and 2 copies to Respondent's attorneys of the entire Record; Re: Respondent's Appeal from Trial Committee's Report to the Full Council		29.46
	TOTAL		$1,780.53

I, EDWARD L. CANNON, Secretary-Treasurer of The North Carolina State Bar, do hereby certify that the above represents a true and correct statement of the costs of the above-entitled proceedings.

This 15 day of April, 1966.

/s/ EDWARD L. CANNON, SECY.-TREAS
Edward L. Cannon, *Secretary-Treasurer*
The North Carolina State Bar

APPENDIX "D"

Report of the Trial Committee

(The following is the Report of the Trial Committee as printed in the Record before the Supreme Court of North Carolina, at Pages 79 through 87.)

RECEIVED Jan. 6, 1967, N. C. STATE BAR
Raleigh, N. C.

Raleigh, North Carolina
January 6, 1966

Mr. Edward L. Cannon, Secretary-Treasurer
The North Carolina State Bar
Justice Building
Raleigh, North Carolina

In Re the North Carolina State Bar,
Complainant, vs. Reginald Lee
Frazier, Attorney at Law, New Bern
Craven County, Respondent

Dear Mr. Cannon:

The Trial Committee appointed by the Supreme Court of North Carolina pursuant to G. S. 84-28 § (3), § (f) respectfully transmits herewith the original of report of the Trial Committee dated January 6, 1966 together with the records. We call your attention to G. S. 84-32 with respect to certifying copies of this to the Supreme Court and to the Superior Court of Craven County. We enclosed

sufficient copies to be furnished with copy of this letter to counsel for Complainant and Respondent and his counsel.

Yours very truly,

TRIAL COMMITTEE
F. J. Carnage
F. E. Wallace, Jr.
J. A. Pritchett

Enclosures

cc: Robert D. Rouse, Farmville
Samuel S. Mitchell, Raleigh
Floyd B. McKissick, Durham
Herman L. Taylor, Greensboro
J. LeVonne Chambers, Charlotte
Lisbon C. Berry, Jr., Wilmington

NORTH CAROLINA
CRAVEN COUNTY

BEFORE THE TRIAL COMMITTEE

(Title) REPORT OF THE TRIAL COMMITTEE

The Trial Committee appointed by the Supreme Court of North Carolina, pursuant to G. S. 84-28, subsection (f), to hear and determine this cause, respectfully reports as follows:

This proceeding was instituted December 14, 1964, by summons, notice and complaint to the respondent, praying that disciplinary action be administered to Reginald Lee Frazier based upon charges arising out of Civil Action 7954, entitled "James Henry White and wife, Wealthy White, Plaintiffs, v. Hattie McCarter, Reginald L. Frazier, individually, and Reginald L. Frazier, trustee, Defendants." The pertinent portions of the pleadings, evidence and judgment in the above Civil Action No. 7954 were offered in evidence and filed with the original record in this proceeding.

The respondent filed answer to the complaint instituted by the complainant, which answer discloses that respondent passed the North Carolina Bar examination on August 5, 1960, and was not engaged in the practice of law all of the time intervening between August 5, 1960, and June, 1961, when the note and deed of trust, the subject matter of Civil Action No. 7954, was prepared.

After due notice to counsel representing complainant and respondent, the Trial Committee met at the courthouse in New Bern, North Carolina, May 28, 1965, for a pre-trial

conference and to hear motions. The Trial Committee organized and appointed J. A. Pritchett to serve as chairman of the committee.

At the pre-trial conference, Mr. Robert D. Rouse, Jr. was present as counsel for complainant. The respondent was present in person and represented by Mr. Floyd McKissick, Mr. LeVonne Chambers, Mr. Libson C. Berry and Mr. Samuel S. Mitchell.

The pleadings of the respondent also contain motions to strike as set out therein and the complainant moved to strike paragraph #2 of the fourth further answer. Counsel for complainant and respondent argued the motions and, after hearing argument, the motion of the complainant to strike paragraph #2 of the fourth further answer and defense was allowed.

The following rulings were made upon the motions of the respondent to strike:

Motion to strike section 3 was denied. Motion to strike section 13 was allowed. Motion to strike section 14 was denied. Motion to strike section 15 was allowed. Motion to strike sections 16, 17, 22, 23, 24, 28, 29, 30, 31, 32, 33, 34 and 36 were denied.

To the adverse ruling of the Trial Committee upon each of the motions exceptions were duly made in apt time.

EXCEPTION #13A

After ruling on the motions, respondent moved for an adverse examination of Mr. Edward L. Cannon, Secretary of the North Carolina State Bar. Before the adjournment of the committee it was agreed that the adverse examination would be held in Raleigh, North Carolina, on June 10, 1965,

and that the trial of this cause would be held in New Bern, North Carolina, at 9:30 A.M. June 28, 1965. A report of the proceedings held May 28, 1965, were recorded and transcribed by Clifton R. Hood, Court Reporter, and the original is filed with this report.

The adverse examination of Mr. Edward L. Cannon was held in the Justice Building, Raleigh, North Carolina, June 10, 1965, and the same was reported and transcribed by Mr. Clifton R. Hood, Court Reporter, and the Original is filed with this report.

The Trial Committee was not present for this examination, but the committee has read the evidence and files the original herewith as a part of the record in this proceeding.

On June 28, 1965, pursuant to adjournment, the Trial Committee resumed the hearing at the courthouse in New Bern, North Carolina, at which hearing the respondent was present and represented by Mr. Samuel S. Mitchell, Mr. Floyd B. McKissick, Mr. Lisbon Berry and Mr. Herman Taylor.

At the beginning of the hearing it was stipulated that where the name "McCotter" appears in the record recorded by Clifton R. Hood, it should have been "McCarter."

The proceedings at this hearing were recorded by Clifton R. Hood, Court Reporter, transcribed, and the original filed herewith as a part of the record.

Before the offering of evidence, respondent filed a motion to quash or dismiss for lack of due process by reason of refusal to disclose evidence. This motion is set out on pages 2 to 5 of the transcript of evidence. The motion was denied and respondent excepted.

EXCEPTION #32A.

The respondent then filed another motion to examine the members of the Grievance Committee of the North Carolina State Bar. (R pp 21-24) This motion was denied and respondent excepted.

EXCEPTION #33A.

The respondent then filed motion to quash or dismiss for lack of due process by reason of procedural irregularities. (R pp 24-27) The Trial Committee denied this motion and respondent excepted.

EXCEPTION #34A.

The respondent then renewed the motion to strike which the committee ruled on adversely to the respondent at the pre-trial conference. This motion was denied and respondent excepted.

EXCEPTION #13B.

The complainant then introduced evidence and from the evidence offered and the pleadings, the Trial Committee finds the following facts:

1. That the North Carolina State Bar on December 14, 1964, filed a complaint against Reginald Lee Frazier, Attorney at Law, New Bern, Craven County, North Carolina, alleging that the respondent while acting as trustee in a deed of trust and as attorney at law did unlawfully and willfully—(a) detain without a bona fide claim thereto money collected in his capacity as attorney;

(b) engage in conduct involving willful deceit and fraud and other unprofessional conduct;

(c) detain without bona fide claim thereto property and money collected in a fiduciary capacity;

(d) did violate the Canons of Ethics which have been adopted and promulgated by the Council of the North Carolina State Bar.

II. That the respondent passed his Bar examination August 5, 1960, and was duly admitted to the North Carolina Bar and in the month of June, 1961, was engaged in the practice of law in Craven County, North Carolina.

III. That in June, 1961, respondent prepared a deed of trust from James Henry White and wife, Wealthy White, to secure the payment of a $1,000 note payable to Hattie McCarter, party of the third part in said deed of trust, and the note prepared and secured thereby was made payable to "Hattie McCarter and Reginald L. Frazier"; that the act of respondent in making himself one of the payees in the note appears to have been due to inexperience of respondent at the time in preparation of deeds of trust and notes.

IV. That the respondent collected payments on said note from time to time.

V. That subsequently James Henry White and wife, Wealthy White, instituted action in the Superior Court of Craven County, North Carolina, the same being Civil Action No. 7954, against Hattie McCarter and Reginald Lee Frazier, individually, and Reginald Lee Frazier, trustee, alleging in substance that they owed to Hattie McCarter balance of $350.00 on said note, without interest; that she refused to accept it in settlement of the deed of trust and

seeking cancellation of the deed of trust upon the payment of $350.00 in cash. Hattie McCarter filed answer in said action and alleged as a basis of a cross action against the respondent that she recover of the respondent, Reginald Lee Frazier, such moneys as may be shown to the Court as having been paid to him by the plaintiffs in that action for the defendant, Hattie McCarter. The respondent, Reginald Lee Frazier, filed answer to the cross action of Hattie McCarter, denying the counterclaim and cross action of Hattie McCarter. Upon the trial of the foregoing action, the following issues were submitted to the jury and answered by the jury as follows:

QUESTION: Was the defendant, Reginald L. Frazier, acting as attorney and agent of the defendant Hattie McCarter in connection with the sale of the lots in question to the plaintiffs, and the collection of the money therefor?

ANSWER: Yes.

QUESTION: In what amount if, any, are the plaintiffs White indebted to the defendant Hattie McCarter?

ANSWER: $350.00. Without interest.

QUESTION: In what amount, if any, is the defendant Hattie McCarter entitled to recover of the defendant Reginald L. Frazier on her cross action and counterclaim, as alleged?

ANSWER: $428.00.

The respondent appealed from the judgment of the Superior Court of Craven County, North Carolina, entered upon the trial of the foregoing action, and the Court in the opinion reported in 261 NC 362 stated, in part, as follows:

"McCarter's cross action against Frazier raises the simple question whether Frazier had fully accounted for the $900.00 collected by him and, if not, the amount of his default. The court placed the burden upon McCarter to satisfy the jury by the greater weight of the evidence that Frazier is indebted to her and the amount of the indebtedness. Of this, Frazier is in no position to complain. The purpose of his pleadings is that he collected $900.00 for McCarter and paid it to her in full. Payment is an affirmative plea and the burden of showing payment is on the one who relies on payment as a defense."

The court found no error in the trial in Superior Court.

VI. That, during the pendency of the foregoing Civil Action No. 7954 and after cross action was asserted by Hattie McCarter against the respondent, the respondent had a conversation with Hattie McCarter in his office concerning the subject matter of the pending Civil Action and which conversation was recorded without the knowledge of Hattie McCarter. This conversation is attached to the complaint filed and marked "EXHIBIT C."

VII. That, upon the evidence offered by the complainant, which is supported by the jury verdict in the foregoing Civil Action No. 7954, the committee finds that Reginald Lee Frazier was acting as attorney and agent of the said Hattie McCarter in connection with the sale of the lots to the plaintiffs in that action and in the collection of the money therefor and that he detained without a bona fide claim thereto money in the sum of $428.00 belonging to Hattie McCarter and collected in his capacity as attorney.

VIII. That the respondent violated the Canons of Ethics which have been adopted and promulgated by the Council of the North Carolina State Bar in the collection and retaining of the sum of $428.00 for Hattie McCarter in his capacity as attorney.

Conclusions of Law

I. That, upon the foregoing findings of fact and the evidence offered in this proceeding, the Trial Committee concludes as a matter of law that the respondent is guilty of corrupt or unprofessional conduct in the following particulars:

(a) that the respondent did detain without a bona fide claim thereto money collected in his capacity as attorney for Hattie McCarter in the sum of $428.00.

II. That the conduct of respondent in conferring with Hattie McCarter during the pendency of the aforesaid Civil Action No. 7954 bespeaks of the lack of experience of a young lawyer and is not sufficient in the opinion of the Trial Committee to support more than a reprimand.

Judgment

Thereupon, pursuant to G. S. 84-28 (2), it is hereby ordered and adjudged that the respondent, Reginald Lee Frazier, be, and he is hereby suspended from the practice of law for a period of twelve (12) months next following the date of the filing of this report and judgment. It is further ordered and adjudged that the respondent pay the cost

of this action, the same to be taxed by the Council of the State Bar.

The ruling of the Trial Committee upon exceptions of the respondent to the evidence offered by the complainant as shown in the transcript (R p 27, hearing of June 28, 1965) are indicated as follows: "O" for overruled, "S" for sustained.

This Jan. 6th, 1966.

F. J. CARNAGE
F. E. WALLACE, JR.
J. A. PRITCHETT
Trial Committee

RECEIPT FOR DELIVERY OF ABOVE document showing date delivered 1-10-65; signature or name of Addressee: Samuel S. Mitchell; signature of Addressee's agent, if any: Joyce B. Flippin, appears in original transcript.

APPENDIX "E"

North Carolina General Statutes 84-28

The council or any committee of its members appointed for that purpose, or designated by the Supreme Court,

(1) Shall have jurisdiction to hear and determine all complaints, allegations, or charges of malpractice, corrupt or unprofessional conduct, or the violation of professional ethics, made against any member of the North Carolina State Bar;

(2) May administer the punishments of private reprimand, suspension from the practice of law for a period not exceeding twelve months, and disbarment as the case shall in their judgment warrant, for any of the following causes:

a. Commission of a criminal offense showing professional unfitness;

b. Detention without a bona fide claim thereto of property received or money collected in any fiduciary capacity;

c. Soliciting professional business;

d. Conduct involving willful deceit or fraud or any other unprofessional conduct;

e. Detention without a bona fide claim thereto of property received or money collected in the capacity of attorney;

f. The violation of any of the canons of ethics which have been adopted and promulgated by the council of North Carolina State Bar.

(3) May invoke the processes of the courts in any case in which they deem it desirable to do so and formulate rules of procedure governing the trial of any such person. Such rules shall make provision for:

a. Setting forth the charges in the form required for a complaint in a civil action in the Superior Court.

b. Notice of the charges by the service upon the person charged of a copy of the said complaint. Such service made by any officer authorized to serve legal processes wherever the person charged may be found.

c. The right of the defendant to file a written and verified answer in which he may plead any defense to the merits of the charge, the sufficiency of the charge as alleged, or any other defense available to him. All defenses must be asserted by verified answer.

d. The right of the person charged to demand a trial:

1. In the superior court at a regular term for the trial of civil cases by a judge and a jury, or by written agreement of all parties trial by jury may be waived and the facts found by the judge, or

2. By a committee of not less than three members of the Bar who are not members of the council and are actively practicing in the State, such committee to be designated by the Supreme Court, or

3. By a committee of not less than three members of the council. The election permitted shall be made in the answer, and if no election is made in the answer the person charged shall be conclusively deemed to have elected to be tried by a committee of the council. If the person charged shall not elect to be tried in the superior court in term as above provided, he shall be conclusively deemed to have waived all right to a trial by jury.

e. The certification, if the person charged shall elect to be tried in the superior court, of the original complaint and answer shall be made to the clerk of the superior court of the county in which such person shall reside if he resides in this State, or not reside in this State. The proceeding shall not be subject to dismissal if certification is made for removal to the proper county. After certification all proceedings in connection with the charge shall be conducted in the superior court in term in accordance with the laws and rules relating to civil actions, with right of appeal to the Supreme Court.

f. For the trial of the person charged before a committee (if trial by a jury is waived) selected in accordance with the foregoing provisions, which trial shall conform as nearly as practicable to the procedure provided by law before referees in references by consent with the right to appeal to the superior court by the filing of exceptions with the council and from order or judgment of

the council, the entire record shall be filed with the clerk of the superior court of the county in which the person charged resides if he resides within the State, or in Wake County if the person charged does not reside within the State, and thereafter all proceedings in connection with the charge shall be conducted in the superior court in term in accordance with the laws and rules relating to civil actions in which there has been a reference by consent, but neither party shall be entitled to a trial by jury. Both parties shall have the right to appeal to the Supreme Court in accordance with the procedure permitting appeals in civil actions.

Trial before the committee appointed for that purpose by the council, or designated by the Supreme Court, shall be held in the county in which the accused member resides or if the accused is residing outside of the State, then in Wake County: Provided, however, that the committee conducting the hearing shall have power to remove the same to any county in which the offense, or any part thereof, was committed, if in the opinion of such committee the ends of justice or convenience of witnesses require such removal. The procedure herein provided shall apply in all cases of discipline or disbarments arising under this section.

Whenever the council shall have directed a hearing upon any charges against a member of the bar and said member shall request it to do so, the council shall advise the Supreme Court of the same and request the Supreme Court, through the Chief Justice, to designate a committee of not less than three members of the bar who are not members

of the council, and who are actively practicing in the State, to sit as a trial committee to hear the cause; said committee when so designated shall proceed in the same manner as in the case of a committee of the council and under the same procedures set forth herein or as prescribed by rules adopted by the council and approved by the Supreme Court.

APPENDIX "F"

Rules of the North Carolina State Bar, Article VI

(The following are the applicable Rules which pertain to the disciplinary actions involving attorneys at law.)

Article VI.

Meetings of the Council.

[Relative portions of Rules of North Carolina State Bar, Article VI thereof.]

Section 5. *Standing Committees of the Council:*—The standing committees of the council shall consist of:

a. An Executive Committee of not less than three councilors, elected by the Council, and the President and Secretary-Treasurer.

It shall be the duty of the Executive Committee to perform such duties as the Council shall designate including, however, the auditing of the books and records of the Secretary-Treasurer at each regular meeting of the Council.

b. Committee on Legal Ethics and Professional Conduct of not less than three councilors elected by the Council.

It shall be the duty of the Committee on Legal Ethics and Professional Conduct to study canons of ethics and professional conduct and make such recommendations from time to time to the Council as it may deem proper and necessary; study and determine such questions as may arise as to the meaning and application of the canons of ethics and rules of professional conduct, and advise members of the State Bar upon request in respect thereto, and perform such other duties in connection with the canons

of ethics and rules of professional conduct as it may be requested to perform by the Council of the North Carolina State Bar.

c. Committee on Grievances of not less than three councilors elected by the Council.

1. It shall be the duty of Committee on Grievances to investigate and study all complaints which may be made against members of the State Bar. The Committee may include in its investigation all matters which may come to its attention with reference to the member complained of. It shall make a report to the Council at each quarterly meeting of the action taken by it upon all matters which have come to its attention and, if the action recommended be other than dismissal of the complaint, it shall state the facts and circumstances which have come to its attention in connection with the complaint. If the recommendation of the Committee on Grievances is for dismissal of the charges, the report shall be private. It shall not be necessary to examine witnesses, but the Committee shall have authority to require affidavits or other statements in sufficient form and substance to satisfy it as to the probable truth of the charges contained in the complaint.

2. The Secretary shall require all complaints to be in the form of affidavits upon forms prepared for such purpose. Where the complaint on its face requires it, the Secretary shall obtain certified copies of court records, or verified copies of any other exhibit or exhibits, which shall accompany and be attached to the complaint.

3. All verified complaints lodged with the Secretary shall be immediately forwarded to the Chairman of Grievance Committee for initial screening.

4. If the Chairman of the Grievance Committee is of the opinion that the complaint should be entertained, he shall forthwith proceed to issue letter of notice to the accused attorney, setting forth the substance of the charges made against him in sufficient detail to enable such accused attorney to file an intelligent answer thereto, and notifying the accused attorney to file his preliminary answer to the charges within 15 days of the receipt of such letter of notice, and further advising such accused attorney that he may attach to his answer such exhibits as he may desire, which letter of notice shall be forwarded to such accused attorney by certified or registered mail. The answer need not be verified, but all exhibits attached thereto must be certified.

5. Any action taken by the Chairman of the Grievance Committee shall be reviewed by the full committee.

6. After answer has been filed by the accused attorney, or the time for filing such answer has expired, the Grievance Committee shall consider the charge filed and make recommendation to the full Council.

7. Where any complaint has been entertained by the Grievance Committee, the Secretary shall keep a docket on such case, listing thereon the action taken, the date thereof, and the progress of the case from the time of its original institution until its final conclusion.

d. Committee on Legislation and Law Reform of not less than three councilors elected by the Council.

It shall be the duty of the Committee on Legislation and Law Reform to examine proposed changes in the law; to examine and propose changes in the law and judicial pro-

cedure; to promote the simplification of law and procedure; and perform such other duties in connection with the improvement of law and procedure as may from time to time be requested by the Council of the North Carolina State Bar.

The Committee on Legislation and Law Reform shall not appear before committees of the Legislature, except upon the approval of the Council, nor shall it make specific endorsements of changes in the laws or of new laws except with the consent of the Council.

e. Committee on Unauthorized Practice of not less than three Councilors elected by the Council.

f. Committee on Membership of not less than three Councilors elected by the Council.

APPENDIX "G"

Assignments of Errors

NORTH CAROLINA
CRAVEN COUNTY

THE NORTH CAROLINA STATE BAR, Complainant,

vs.

REGINALD LEE FRAZIER, Attorney at Law, New Bern, Craven County, North Carolina, Respondent.

Respondent groups his EXCEPTIONS and ASSIGNMENTS OF ERRORS:

EXCEPTION #21 and EXCEPTIONS #1, 2, 3, 4, 5, 6, 7, 8, 9, 16, and 17 (R pp 127-130, 143-144)

EXCEPTIONS #1, 2, 3, 4, 5, 6, 7, 8, 9, 16 and 17 (R pp 127-130, 143-144) are recapitulated in and brought forward in EXCEPTION #21 (R p 191) EXCEPTIONS #1 to 9 were directed toward the Trial Committee's Report. EXCEPTIONS #16 and 17 were directed toward the Judgment of the Full Council, while EXCEPTION #21 was directed toward the Judgment of the Superior Court.

Respondent's EXCEPTION #21 (R p 162) was as follows:

"EXCEPTION #21

Respondent objects and excepts to the affirmance by the Court of the following findings of fact as made by the Council of the North Carolina State Bar:

1. That the North Carolina State Bar on December 14, 1964, filed a complaint against Reginald Lee Frazier, Attorney at Law, New Bern, Craven County, North Carolina, alleging that the Respondent while acting as Trustee in a deed of trust and as attorney at law did unlawfully and wilfully—

(a) detain without a bona fide claim thereto money collected in his capacity as attorney;

(b) engage in conduct involving wilful deceit and fraud and other unprofessional conduct;

(c) detain without bona fide claim thereto property and money collected in a fiduciary capacity;

(d) did violate the Canons of Ethics which have been adopted and promulgated by the Council of the North Carolina State Bar.

'II. That the Respondent passed his Bar examination August 5, 1960 and was duly admitted to the North Carolina State Bar and in the month of June 1961 was engaged in the practice of law in Craven County, North Carolina.

'III. That in June 1961 Respondent prepared a deed of trust from James Henry White and wife, Wealthy White, to secure the payment of a $1000.00 note payable to Hattie McCarter, party of the third part in said deed of trust, and the note prepared and secured thereby was made payable to

'Hattie McCarter and Reginald L. Frazier'; that the act of Respondent in making himself one of the payees in the note appears to have been due to inexperience of Respondent at the time of preparation of deeds of trust and notes.

IV. That the Respondent collected payments on said note from time to time.

V. That subsequently James Henry White and wife, Wealthy White, instituted action in the Superior Court of Craven County, North Carolina, the same being Civil Action No. 7954, against Hattie McCarter and Reginald Lee Frazier individually, and Reginald Lee Frazier, Trustee, alleging in substance that they owed to Hattie McCarter balance of $350.00 on said note, without interest; that she refused to accept it in settlement of the deed of trust and seeking cancellation of the deed of trust upon the payment of $350.00 in cash. Hattie McCarter filed answer in said action and alleged as a basis of a crossaction against the Respondent that she recover of the Respondent, Reginald Lee Frazier, such monies as may be shown to the Court as having been paid to him by the plaintiffs in that action for the defendant, Hattie McCarter. The Respondent, Reginald Lee Frazier, filed answer to cross action of Hattie McCarter, denying the counterclaim and cross action of Hattie McCarter. Upon the trial of the foregoing action the following issues were submitted to the jury and answered by the jury as follows:

QUESTION: Was the defendant, Reginald L. Frazier, acting as attorney and agent of the Defendant, Hattie McCarter, in connection with the sale of the lots in question to the plaintiffs, and the collection of the money therefor?

ANSWER: Yes.

QUESTION: In what amount, if any, are the plaintiffs, White, indebted to the defendant, Hattie McCarter?

ANSWER: $350.00. Without interest.

QUESTION: In what amount, if any, is the defendant, Hattie McCarter, entitled to recover of the defendant Reginald L. Frazier, on her cross action and counterclaim, as alleged?

ANSWER: $428.00.

'The Respondent appealed from the judgment of the Superior Court of Craven County; North Carolina, entered upon the trial of the foregoing action, and the Court in the opinion reported in 261 NC 362 stated in part as follows:

'"McCarter's cross action against Frazier raises the simple question whether Frazier had fully accounted for the $900.00 collected by him and, if not, the amount of his default. The Court placed the burden upon McCarter to satisfy the jury by the greater weight of the evidence that Frazier is indebted to her and the amount of the indebtedness. Of this, Frazier is in no position to complain. The purport of his pleadings is that he collected $900.00 for McCarter and paid it to her in full. Payment is an affirmative plea and the burden of showing payment as a defense.

'VI. That during the pendence of the foregoing Civil Action No. 7954 and after cross action was asserted by Hattie McCarter against the Respondent, the Respondent had a conversation with Hattie McCarter in his office concerning the subject matter of the pending civil action and which conversation was recorded without the knowledge of Hattie McCarter. This conversation is attached to the complaint filed and marked Exhibit "C".

'VII. That Reginald Lee Frazier was acting as attorney and agent of the said Hattie McCarter in connection with the sale of the lots to the plaintiffs in that action and in the collection of the money therefor.'

"The basis of this EXCEPTION is that all and each of the above quoted findings of fact are entirely based upon incompetent and prejudicial hearsay evidence which was offered and received, over the respondent's objections and exceptions, in a manner which was purposefully designed and calculated to shift complainant's burden of proof and complainant's burden of prosecuting its action to the shoulder of respondent. This deliberate acceptance of incompetent hearsay as evidence was patently in denial of respondent's rights under Section 11 of Article I of the Constitution of North Carolina, pertaining to self-incrimination and the right of confrontation, and under Section 17 of said Article of the State Constitution in regards to procedural due process of law. Respondent also invokes herein constitutional protection of Due Process and Equal Protection Clauses of the 14th Amendment to the federal constitution against a trial based solely under hearsay evidence.

"Respondent also objects and excepts to the above quoted findings of fact as follows:

"FINDING OF FACT #1.

"Respondent objects and excepts to Finding of Fact #1 for the reason that the so called Complaint filed against Respondent, Reginald Lee Frazier, is unauthorized as having been filed upon exhibits and without being supported by a verified complaint as contemplated by statute and the rules of the State Bar and particularly such rules as are found in Appendix 6 of the General Statutes of North

Carolina. This irregularity was further pointed up by Respondent's Motion to Quash or Dismiss for Lack of Due Process by Reason of Procedural Irregularities. Reception of evidence from which the Court found all of the facts included in this Finding of Facts was objected to before the Trial Committee and the Full Council.

"FINDING OF FACT #II (R p 166)

"Respondent objects and excepts to Finding of Fact #II as being totally irrelevant and immaterial in this proceeding. Reception of evidence from which the Court found all of the facts included in this Finding of Fact was objected to before the Trial Committee and the Full Council.

"FINDING OF FACT #III (R p 166)

"Respondent objects and excepts to Finding of Fact #III as being totally unsupported by competent evidence and as having been based upon the Record and Transcript in the Trial of a Civil action, to wit, *White et ux* vs. *Hattie McCarter et al,* which record and transcript were introduced in Respondent's hearing in this cause over his strenuous objections and exceptions. Respondent further objects and excepts to the Finding of Fact #III as being insufficient to support or to aid in supporting the Conclusion of Law arrived at by the Trial Committee, the Full Council, or the court. Reception of evidence from which the Court found all of the facts included in this Finding of Fact was objected to before the Trial Committee and the Full Council.

"FINDING OF FACT #IV: (R p 176)

"Respondent objects and excepts to Finding of Fact #IV as being totally unsupported by competent evidence and as

having been based upon the Record and Transcript in the Trial of a Civil Action, to wit, *White et ux* vs. *Hattie McCarter et al,* which Record and transcript were introduced in Respondent's hearing in this cause over his strenuous objections and exceptions. Respondent further objects and excepts to the Finding of Fact #IV as being insufficient to support or to aid in supporting the Conclusion of Law arrived at the Full Council or the Court. Reception of evidence from which the Court found all of the facts included in this Finding of Fact was objected to before the Trial Committee and the Full Council.

"FINDING OF FACT #V (R p 167)

"Respondent objects and excepts to this Finding of Fact #V as being totally unsupported by competent evidence and as having been based upon the Record and Transcript in the Trial of a Civil Action, to wit, *White et ux* vs. *Hattie McCarter et al,* which Record and Transcript were introduced in Respondent's hearing in this cause over his strenuous objections and exceptions. Respondent further objects and excepts to the Finding of Fact #V as being insufficient to support or to aid in supporting the Conclusion of Law arrived at by the Trial Committee, Full Council, or this Court. Finally, Respondent objects and excepts to Finding of Fact #V insofar as Finding of Fact #V includes matter which was before the Supreme Court of North Carolina in an appeal in *White et ux* vs. *Hattie McCarter et al,* which is reported at Page 362, North Carolina Reports, Volume 261. This exception is directed toward the circumstance that none of the facts found are based upon competent evidence and reception of the evidence was objected to by Respondent at every stage of this proceeding.

"FINDING OF FACT #VI. (R p 168)

"Respondent objects and excepts to Finding of Fact #VI as being totally unsupported by competent evidence and as having been based upon the Record and Transcript in the trial of a Civil action, to wit, *White et ux* vs. *Hattie McCarter et al,* which record and transcript were introduced in Respondent's hearing in this cause over his strenuous objections and exceptions. Respondent further objects and excepts to the Finding of Fact #VI as being insufficient to support or to aid in supporting the Conclusion of Law arrived at by the Trial Committee, the Full Council or this Court. Reception of evidence from which the Court found all of the facts included in this Finding of Fact was objected to before the Trial Committee, the Full Council, and at each stage of this proceeding.

"FINDING OF FACT #VII (R p 168)

"Respondent objects and excepts to Finding of Fact #VII as being totally unsupported by competent evidence and as having been based upon the Record and Transcript in the Trial of a Civil Action, to wit, *White et ux* vs. *Hattie McCarter et al,* which Record and Transcript were introduced in Respondent's hearing in this cause over his strenuous objections and exceptions. Respondent further objects and excepts to the Finding of Fact #VII as being insufficient to support or to aid in supporting the Conclusions of Law arrived at the Trial Committee and the Full Council or this Court. Reception of evidence from which the Court found all of the facts included in this Finding of Fact was objected to before the Trial Committee, the Full Council and at each stage of this proceeding."

All of this ASSIGNMENT OF ERROR relates to the Court's affirmance of FINDING OF FACTS, as made by the Full Council, and which was based upon inadmissible, incompetent and prejudicial hearsay evidence.

II

EXCEPTION #22 (R p 168)

Respondent's EXCEPTION #22 was directed toward the Judgment of the Superior Court and was as follows:

"EXCEPTION #22.

"Respondent objects and excepts to the making of additional findings of fact by the Court which were at variance with the findings of fact, as found by the Full Council, and which additional findings of fact were as follows:

"'VIII. That the conversation aforesaid was recorded without the permission or knowledge of Hattie McCarter; that at the time of said conversation the said Hattie McCarter was represented by counsel; and said conversation was had without the knowledge or consent of said counsel.

"'IX. That Reginald Lee Frazier retained without a bona fide claim thereto money in the sum of $428.00 belonging to Hattie McCarter and collected in his capacity as attorney.

"'X. That the Respondent violated the laws of the State of North Carolina, and specifically G.S. 84-28 (2) b in the collection and retaining of the sum of $428.00 for Hattie McCarter in his capacity as attorney.

"'XI. That the Respondent violated the Canons of Ethics which have been promulgated and adopted by the Council of the North Carolina State Bar, and specifically Canon No. 9 in conferring with Hattie McCarter during the pendency of the aforesaid Civil Action No. 7954.'"

The basis of this EXCEPTION and ASSIGNMENT OF ERROR is that, in presuming to find facts not found by the Full Council, the Court is presuming improperly to exercise the judicial discretion of the Superior Court as upon a review of a referee's report, as provided by North Carolina General Statute 1-194; whereas, North Carolina General Statute 1-194, as applied to the Judgment of the Full Council and as applied to such manner as to permit the finding of fact by the Superior Court contrary of at variance to the Finding of fact by the Full Council, is unconstitutional if so applied, the presumptive exercise, of such powers being contrary to Article IV of the Constitution of North Carolina and to the doctrine of the separation of judicial and administrative power, as protected by the Due Process and Equal Protection Clauses of the 14th Amendment to the Federal constitution. Moreover, assuming that North Carolina General Statute 1-194 does apply to this case, the presumptive exercise by the Superior Court in the matter of finding facts not found by the Full Council and in entering a different Judgment from that of the Full Council, is contrary to the judicial power limited in North Carolina General Statute 1-194, which requires a 'ten days' notice to the adverse party' of a Motion to 'set aside, modify . . .' a referee's report. Such exercise of jurisdiction of the Superior Court and as being without notice to respondent, contrary to Section 17 of Article I of the Constitution of North Carolina and as being contrary to the Due Process Clause of the 14th Amendment to the Federal constitution."

III.

EXCEPTION #23 (R p 170)

Respondent's EXCEPTION #23 was directed to the Judgment of the Superior Court and was as follows:

"EXCEPTION #23

"Respondent objects and excepts to all of the conclusions of law, as made by the Superior Court, upon the same reasons as are set out in EXCEPTION #22 and by reason of the same constitutional provisions invoked in EXCEPTION #22. Respondent further objects and excepts to the conclusions of law of the Superior Court as being totally unsupported by competent findings of fact or competent evidence or by a proceeding which is authorized by the Rules of the North Carolina State Bar or the General Statutes of North Carolina or the Constitutions of the State of North Carolina of the United States."

IV.

EXCEPTION #24 (R p 170)

Respondent's EXCEPTION #24 was directed toward the Judgment of the Superior Court and was as follows:

"EXCEPTION #24

"Respondent objects and excepts to the signing and entry of Judgment by this Court by reason of the matters set out in EXCEPTION #22 and #23 and by reason of the constitutional protections therein invoked."

V.

EXCEPTIONS #25, 31, 32 and 32A (R p 171)

Respondent's EXCEPTION #25 was directed toward the Judgment of the Superior Court and was as follows:

"EXCEPTION #25

"Respondent objects and excepts to the failure of the Superior Court to allow respondent's Motion to Quash or Dismiss for Lack of Due Process by Reason of Refusal to Disclose Evidence. This was EXCEPTION #20 (10) to the Judgment of the Full Council."

Respondent's EXCEPTION #32 was as follows:

"EXCEPTION #32:

"Mr. Mitchell: And, of course, for the record we would like the record to show that we objected to the limited examination of the minutes and to having to examine those minutes in the presence of the Trial Committee and having to examine them today without our having had at least the ten days that we asked for prior to the further continuation of the hearing of this cause."

Respondent's EXCEPTION #32A was to the Report of the Trial Committee, wherein the Trial Committee formally recorded its action and Respondent's exception thereto in respect to this motion.

VI.

EXCEPTION #26 and EXCEPTIONS #11, 20, 33 and 33A (R pp 171, 131, 146)

Respondent's EXCEPTION #26 was directed toward the Judgment of the Superior Court and was as follows:

"EXCEPTION #26

"Respondent objects and excepts to the failure of the Superior Court to allow respondent's Motion for Adverse Examination of Members of the Grievance Committee.

This was EXCEPTION #20 (11) to the Judgment of the Full Council."

"EXCEPTION #33

"Mr. Pritchett: Let the record show that this motion was filed the 28th day of June and that no request was made for the Trial Committee at the Pre-Trial Conference for such an examination. The Trial Committee denies the Respondent's motion for the pre-trial examination of the Grievance Committee."

Respondent's EXCEPTIONS #11, 20 and 33A are directed toward the same alleged error.

VII.

EXCEPTION #27 and EXCEPTIONS #12, 20, 34 and 34A (R pp 171, 131, 146)

Respondent's EXCEPTION #27 was directed toward the Judgment of the Superior Court and was as follows:

"EXCEPTION #27

"Respondent objects and excepts to the failure of the Superior Court to allow respondent's Motion to Quash or Dismiss for Lack of Due Process by Reason of Procedural Irregularities. This was EXCEPTION #20 (12) to the Judgment of the Full Council."

Respondent's EXCEPTION #12, 20, 34 and 34A are directed toward the same alleged error.

VIII.

EXCEPTIONS #28 and EXCEPTIONS #13, 13A, 13B and 20 (R pp 171, 131, 146)

Respondent's EXCEPTION #28 was directed to the Judgment of the Superior Court and was as follows:

"EXCEPTION #28

"Respondent objects and excepts to the failure of the Superior Court to grant respondent's Motions to Strike, which Motions were overruled by the trial Committee, whose rulings were affirmed by the Full Council. This was EXCEPTION #20 (13) to the Judgment of the Full Council".

Respondent's EXCEPTION #13A was as follows:

"EXCEPTION #13A to Trial Committee's Report.

"The following rulings were made upon the Motion of the Respondent to strike:

"Motion to strike section 3 was denied. Motion to Strike Section 13 was allowed. Motion to Strike Section 14 was denied. Motion to strike Section 15 was allowed. Motion to strike Sections 16, 17, 22, 23, 24, 28, 29, 30, 31, 32, 33, 34, and 36 were denied.

"To the adverse rulings of the Trial Committee upon each of the motions exceptions were duly made in apt time."

Respondent's EXCEPTIONS #13, 13B and 20 are directed toward the same alleged error,

EXCEPTION #29 and EXCEPTIONS #14, 14A and 20 (R pp 171, 132, 146)

Respondent's EXCEPTION #29 was directed toward the Judgment of the Superior Court and was as follows:

"EXCEPTION #29

"Respondent objects and excepts to the failure of the Superior Court to grant respondent's written Motion for

Judgment as of Nonsuit. This was EXCEPTION #20 (14) to the Judgment of the Full Council."

Respondent's EXCEPTIONS #14, 14A and 20 are directed toward the same alleged error.

X.

EXCEPTIONS #34 and 34A (R pp 52, 83)

Respondent's EXCEPTION #34 was directed toward the denial of his written Motion to Quash or Dismiss for Lack of Due Process by Reason of Procedural Irregularities, Respondent contending in said Motion, among other things, that this disbarment proceeding against him had "not proceeded from any reliable complaint as to respondent's conduct, but the same has proceeded purely and solely from spurious and prejudiced innuendo as twisted from the Civil Action upon which the proceeding against respondent is based."

XI.

EXCEPTIONS #35, 36, 37, 38, and 39 (R pp 175-176)

Respondent's EXCEPTIONS 35 through 39 are directed toward the admission into evidence at Respondent's trial of Reports of the Grievance Committee, minutes of the Grievance Committee meeting, minutes of the meeting of the Council of The North Carolina State Bar, and certified copy of letter of notification to Respondent, being the admission of purely hearsay, prejudicial, and incompetent evidential matter, which denied Respondent the right to confront accusers and the means of testing the credibility of this hearsay evidence.

XII.

EXCEPTIONS #40, 41, 42, 43, 44, 45 and 46 (R pp 178-181)

Respondent's EXCEPTIONS #40 through 46 are directed toward the admission as evidence of pleadings in the instant action which have no evidential or probative value and which pleadings, when accepted as evidence, were highly prejudicial, unfair and which admission into evidence constituted an illegal attempt to shift Complainant's burden of proof to Respondent.

The above enumerated EXCEPTIONS are to the admission of paragraphs 10, 14, 16, 17, 22, 23 and 24 of the Complaint in the instant cause, along with the corresponding Answer of Respondent, into evidence, whereas, Respondent's Motion to Strike included all of these paragraphs with the Exception of Paragraph 10. Respondent's EXCEPTIONS to the overruling of his Motion to Strike are brought forward under Group VIII of these ASSIGNMENTS OF ERROR.

XIII.

EXCEPTIONS #47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 60, 61, 62, 63 and 64 (R pp 182-187)

Respondent's EXCEPTIONS #47 through 58 and EXCEPTIONS #60 and 64 are directed toward the admission as evidence of pleadings and proceedings in an entirely unrelated Civil Action, wherein parties and issues are entirely different and which have no evidential or probative value and which pleadings, when accepted as evidence, were highly prejudicial, unfair and which admission into evidence constituted an illegal attempt to shift Complainant's burden of proof to Respondent.

The evidence objected to in these EXCEPTIONS included documents from Civil Case Number 7954, Craven County, entitled *James Henry White and wife, Wealthy White,* vs. *Hattie McCarter, Reginald L. Frazier, individually, and Reginald L. Frazier, Trustee.*

XIV.

EXCEPTION #59 (R p 184)

Respondent's EXCEPTION #59 is directed toward the reception as evidence in the instant proceeding of the Judgment and Opinion of the Supreme Court of North Carolina against Respondent in a Civil Action which is totally unrelated to the instant action and to the issues and parties herein involved.

The Judgment excepted to when admitted into evidence was the Judgment in the appeal of Civil Case Number 7954, Craven County, entitled *James Henry White and wife Wealthy White,* vs. *Hattie McCarter, Reginald L. Frazier, individually, and Reginald L. Frazier, Trustee.*

XV.

EXCEPTIONS #64, 65, 66 and 67 (R pp 187-188)

Respondent's EXCEPTIONS #64 through 67 are related to the reception into evidence in the instant proceeding of the Court Reporter's Transcript in an entirely different civil action wherein the parties and issues are entirely different and to the reception in evidence of pleadings of the instant case which related to the civil action above mentioned. This ASSIGNMENT OF ERROR is further directed toward the reception into evidence against Respondent of matter allegedly occurring and transpiring in an en-

tirely separate unrelated civil action wherein the parties and issues were different and which civil action was an action in the Superior Court of Craven County before a Judge and a jury.

The evidence objected to in these EXCEPTIONS including documents from Civil Case Number 7954, Craven County, entitled *James Henry White and wife, Wealthy White* vs. *Hattie McCarter, Reginald L. Frazier, individually, and Reginald L. Frazier, Trustee.*

The evidence objected to under these EXCEPTIONS also includes as incompetent and inadmissible conversation which was admitted into evidence in the Civil Action referred to above and which is a stranger to the parties and issues in this proceeding.

The 16th day of January, 1967.

Respectfully Submitted:

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